

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ROCKLIN UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012010604
ROCKLIN UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012020237 ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM AS MOOT

On January 23, 2012, Student filed a Due Process Hearing Request (complaint) against the Rocklin Unified School District (District) with the Office of Administrative Hearings (OAH). On February 7, 2012, the District filed a complaint against Student, and OAH consolidated the cases for hearing on February 24, 2012. This consolidated matter is set for hearing on May 7 – 10, 2012.

On March 20, 2012, Attorney for Student served a Subpoena Duces Tecum on Laguna Pediatric Therapy that requested records regarding services Laguna Pediatric Therapy provided to Student. On April 9, 2012, Attorney for the District filed a Motion to Quash the Subpoena Duces Tecum (SDT) on the grounds that Student was requesting production of documents before the hearing and that Student previously received documents from Laguna Pediatric Therapy. Student did not file an opposition to the Motion to Quash.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing (20 U.S.C § 1415(h)(2); Ed. Code, § 56506, subd. (e)(3).) There is, however, no right to pre-hearing discovery under the IDEA. A parent may obtain his/her child’s educational records. (Ed. Code § 56504.) Additionally, parents are entitled to receive copies of all the documents the District intends to use at hearing, no less than five days prior to the hearing (Ed. Code § 56505, subd. (e)(7).)

The provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal Code Regs., tit. 5, § 3089.) Subdivision (c)(2) of section 3082 of title 5 of the California Code of Regulations provides in pertinent part that in special education proceedings in California, “[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (SDT) (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party).”

Special education law does not specifically address motions to quash subpoenas or SDT’s. In ruling on such motions, the OAH relies by analogy on the relevant portions of California Code of Civil Procedure, section 1987.1, which provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

DISCUSSION

Student’s SDT requests various documents relating to services provided by Laguna Pediatric Therapy to Student from May 2010 through the present, and to produce the records by March 28, 2012. When Student’s counsel served the SDT, the consolidated matter was set for hearing for April 9 – 12, 2012. OAH continued the hearing on March 28, 2012. Additionally, the District, on behalf of Laguna Pediatric Therapy, objects to Student’s SDT because Laguna Pediatric Therapy previously provided the requested records in October 2011, in response to another SDT from Student.

Because the hearing on the consolidated matter is now set for May 7 – 10, 2012, Student’s SDT is moot and Student will need to serve another SDT upon Laguna Pediatric Therapy to obtain the requested records. As to remainder of the District’s objections to Student’s SDT, those issues are moot and can be raised again depending on if Student issues another SDT upon Laguna Pediatric Therapy and the breadth of the requested documents. Accordingly, the District’s Motion to Quash is denied as moot due to the new hearing dates.

ORDER

The District’s Motion to Quash the Subpoena Duces Tecum on Laguna Pediatric Therapy is denied as moot.

Dated: April 16, 2012

/s/

PETER PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings