

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WHITTIER CITY SCHOOL DISTRICT
AND WHITTIER AREA COOPERATIVE
SPECIAL EDUCATION PROGRAM.

OAH CASE NO. 2012010640

ORDER QUASHING SUBPOENA
DUCES TECUM

On January 24, 2012, Student filed a Due Process Hearing Request (complaint) against the Whittier City School District (District) and Whittier Area Cooperative Special Education Program (WACSEP) with the Office of Administrative Hearings (OAH). This matter is set for hearing on March 19, 2012.

On February 2, 2012, Attorney for Student served a Subpoena Duces Tecum on the District, WACSEP and Sherri Mudd, former WACSEP Executive Director. On February 16, 2012, Attorney for the District, WACSEP and Ms. Mudd filed a Motion to Quash the Subpoena Duces Tecum (SDT) on the grounds that it was seeking discovery which is not permitted in special education matters. 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, subds. (e)(3), (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 Oralingua, a non-public school that Student presently attends as unilateral private placement, and Ms. Mudd’s employment with WACSEP. The District, WACSEP and Ms. Mudd object to Student’s SDT for being overly broad and requesting documents not relevant to the issues in Student’s complaint.

Student’s SDT is extremely broad as to requested documents from January 1, 2011 through November 2011. As to Oralingua, Student requests copies of all internal discussions and external discussions with other educational agencies about scheduling meetings about Oralingua, discussions about Oralingua’s master service contract, Oralingua’s provision of related services and its executive director. As to Ms. Mudd, the SDT requests personnel records about her work performance and separation as WACSEP Executive Director. None of requested documents in the SDT relate specifically to Student. Additionally, the SDT does not include an adequate declaration why these requested documents have any relevance to the underlying issues in the complaint about the appropriateness of the District’s and WACSEP’s offers of services and placement and whether the District and WACSEP predetermined their offers. Accordingly, the records, as requested in the declaration, are beyond the scope of Student’s complaint, and the motion to quash granted.

ORDER

The District’s, WACSEP’s and Ms. Mudd’s Motion to Quash the Subpoena Duces Tecum is granted.

Dated: February 22, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings