

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012050889

ORDER QUASHING SUBPOENA
DUCES TECUMS

On May 21, 2012, Student filed a Due Process Hearing Request (complaint) against the Lodi Unified School District (District) with the Office of Administrative Hearings (OAH). This matter is set for a prehearing conference for September 19, 2012, and hearing on September 24 - 27, 2012.

On June 2, 2012, Attorney for Student served seven Subpoena Duces Tecums (SDTs) on the Attorney for the District, which requested records from District employees. On July 5, 2012, Attorney for the District filed a Motion to Quash the SDTs on the grounds that the SDTs were not properly served, overly broad, and a request for prehearing discovery. On July 11, 2012, Student filed 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, § 56505, subs. (e)(2) and (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 SDTs requests various documents relating to Student, and that the documents be produced to Student's attorney by July 9, 2012. While the District's raises numerous grounds to quash the SDTs, those grounds need not be addressed here because Student's SDTs request the production of documents before hearing and applicable Federal and California statutes and regulations do not provide for prehearing discovery in special education proceedings. Accordingly, the District's motion to quash is granted because Student's SDTs constitute prohibited prehearing discovery.¹

ORDER

The District's Motion to Quash the Subpoena Duces Tecums is granted.

Dated: July 12, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ Nothing in this order prevents Student's attorney from re-serving the SDTs. Additionally, the District may raise any evidentiary objections to the SDTs at the September 19, 2012 prehearing conference.