

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TUOLUMNE COUNTY CALIFORNIA  
CHILDREN'S SERVICES.

OAH CASE NO. 2012100238

ORDER QUASHING SUBPOENA  
DUCES TECUM

On October 5, 2012, Student filed a Due Process Hearing Request (complaint) against the Tuolumne County California Children's Services (CCS) with the Office of Administrative Hearings (OAH).<sup>1</sup> This matter is set for a prehearing conference for March 6, 2013, and hearing on March 19 and 20, 2013.

On January 24, 2013, Attorney for CCS served a Subpoena Duces Tecum (SDT) on the Attorney for the Student, which requested specific records regarding Student, which were to be produced to CCS by February 12, 2013. On February 5, 2013, Attorney for Student filed a Motion to Quash the SDT on the grounds that the SDT was unduly vague and overly broad and burdensome. On February 6, 2013, CCS 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 responsible public agency intends to use at hearing, no less than five days prior to the hearing (Ed. Code § 56505, subd. (e)(7).)

Those 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

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<sup>1</sup> Student dismissed the Sonora Elementary School District and the Tuolumne County Office of Education pursuant to a settlement agreement with these parties.

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

CCS’ SDT requests various documents relating to Student, and that the documents be produced to CCS’ attorney by February 12, 2012. While Student raises numerous grounds to quash the SDT, those grounds need not be addressed here because CCS’ SDT 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. In opposing Student’s motion to quash, CCS incorrectly cites to Government Code, section 11450.20, and section 1024 of title 1 of the California Code of Regulations, which are not applicable to special education due process hearings. (Cal Code Regs., tit. 5, § 3089.) Accordingly, Student’s motion to quash is granted because CCS’ SDT constitute prohibited prehearing discovery.<sup>2</sup>

### ORDER

Student’s Motion to Quash the Subpoena Duces Tecum is granted.

Dated: February 13, 2013

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> Nothing in this order prevents CCS’ attorney from re-serving the SDT. Additionally, Student may raise any evidentiary objections to the SDTs at the March 6, 2013 prehearing conference.