

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CARPINTERIA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100909

ORDER QUASHING DISTRICT'S
SUBPOENAS WITHOUT PREJUDICE

Student filed a Due Process Complaint naming Carpinteria Unified School District (District) on October 15, 2010. The sixty-nine page complaint alleges numerous procedural violations of the Individuals with Disabilities Education Act (IDEA) constituting a denial to Student of a free and appropriate public education (FAPE). Student seeks as remedies, among other things, reimbursement for placement and services through Lindamood Bell Learning Center (LMB) in Santa Barbara, reimbursement for a private neuropsychological assessment performed by Dr. Ann Simun (Dr. Simun), and additional speech and language services as recommended by independent assessor Karen Schnee (Schnee).

The matter is set for a pre-hearing conference on January 10, 2011. The multi-day hearing is set to start on January 24, 2011.

On December 15, 2010, District through its attorney served three subpoenas duces tecum (document subpoenas) on Dr. Simun, Schnee, and LMB. The document subpoenas to Dr. Simun and Schnee sought testing protocols, all assessment reports, notes from the assessments, therapy notes related to any services/therapy provided to Student, and "all other documents" related to their respective assessments and recommendations relating to Student. The document subpoena to LMB sought testing protocols relating to assessments performed on Student in February and November 2010, testing protocols relating to any assessments during 2008-09, 2009-10, and 2010-11 school years, all assessment reports by LMB, therapy notes, progress notes/reports, and all other documents related to LMB's assessments and recommendations concerning Student. The three document subpoenas set the deadline for production of the requested documents for "by January 7, 2011."

On December 20, 2010, Student filed a motion under Government Code section 11450.30 to quash the three document subpoenas. In addition, Student seeks recovery of its attorneys fees related to its motion. Student argued that the subpoenas constituted impermissible discovery, were overbroad, and were untimely. District filed an opposition to Student's motion to quash on December 23, 2010.

APPLICABLE LAW

California Code of Regulations, title 5, § 3082, subdivision (c)(2), provides, in relevant part, that the hearing officer in a special education due process proceeding “shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party.” Government Code section 11450.30, relating to objections to subpoenas, is inapplicable to special education proceedings under California Code of Regulations, title 5, section 3089. Under IDEA, parties have no right to conduct pre-hearing discovery because of the shortened hearing schedule provided for under IDEA. However, at least five business days prior to a due process hearing, each party “must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing.” (34 C.F.R. § 300.512(a)(6).)

ANALYSIS

Student’s motion to quash is incorrectly brought under Government Code section 11450.30, which is inapplicable to special education proceedings. However, Student’s position still has merit. On December 15, 2010, District served three document subpoenas seeking production of a broad range of documents from third-parties, setting the date for production as “by January 7, 2011.” The production date is after the parties’ pre-hearing conference statements are due to OAH, before the January 10, 2011 pre-hearing conference, and ten days before January 17, 2011, the statutory date for document exchange. District’s document subpoenas are not necessary at this time because they seek production of documents well before the statutory exchange date and Student will be required to produce to District all documents Student intends to use at hearing. Based upon their scope and timing, District’s document subpoenas are impermissible discovery, which is not contemplated for IDEA hearings. If, at or after the prehearing conference, District still believes the subpoenas are necessary, the District may seek issuance of the subpoenas by the hearing officer upon a showing of reasonable necessity.

ORDER

District’s subpoenas to LMB, Simun and Schnee are quashed without prejudice to District’s right to ask the hearing officer at or after the prehearing conference to issue subpoenas based upon a showing of reasonable necessity. Student’s request for sanctions is unmeritorious and therefore denied.

Dated: December 27, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

