

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SOUTH PASADENA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011060001
SOUTH PASADENA UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2011050857 ORDER GRANTING IN PART AND DENYING IN PART SOUTH PASADENA UNIFIED SCHOOL DISTRICT'S MOTION TO QUASH SUBPOENA DUCES TECUM

On July 13, 2011, the South Pasadena Unified School District's (District) filed a motion to quash a subpoena duces tecum (SDT) issued by Student to require that Kendra Rose, District's Director of Special Education, produce at the commencement of the hearing, August 9, 2011,¹ a copy of Student's case file, including emails and service provider logs. On July 18, 2011, Student submitted a response.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities 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, subds. (e)(2), (3).)

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

¹ Ms. Rose's declaration indicates that the District believes that the hearing will take more than the one day presently scheduled. If the District wishes to request additional days of hearing, it shall need to file a formal motion.

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 (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 SDTs. In ruling on such motions, the Office of Administrative Hearings relies by analogy on the relevant portions of the California Code of Civil Procedure. Section 1987.1 of that code 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 June 17, 2011 SDT to Ms. Rose requests that she produce Student’s “case file documents, emails regarding [Student] [and] Sp.Ed. service provider logs”. The District objects to this SDT because the District asserts that it will need to make a copy of Student’s complete educational record to comply, which is overly burdensome, especially because the District recently provided Parents with a copy of Student’s education record. Student’s response contends that she only seeks specified documents related to the issues raised in her and the District’s due process complaints.

Student’s response to the District’s motion establishes the District’s confusion in trying to determine the documents that Student requests. Student’s June 17, 2011 SDT clearly requests a complete copy of her educational record, which the District provided on or about April 26, 2011. (Declaration of Alice Salgado, District Secretary; District provided a copy of the educational record from August 21, 2009, the date of Parent’s prior request.) Student’s response is not clear whether Parents in fact received these records, which cover the period alleged in Student’s due process complaint, or if Student is requesting other records that she contends that the District did not produce. Student’s response lists documents that the District purportedly did not produce or were generated after April 26, 2011.

Additionally, the District contends that Student’s SDT is invalid because it does not include an affidavit as to the relevance of the requested documents. The District’s objection is form over substance as it can be easily presumed that Student’s own educational records are relevant as to whether the District provided her with a free appropriate public education.

As to Student’s request that the District produce copy of emails regarding Student, the District contends that it need not produce emails because they are not educational records that a school district must produce in response to a request for educational records. (*S.A. ex rel. L.A. v. Tulare County Office of Education* (E.D.Cal. Sept. 24, 2009) 2009 WL 3126322, *aff’d*, *S.A. v. Tulare County Office of Education* (E.D. Cal. October 6, 2009) 2009 WL 3296653; 20 U.S.C. § 1232g(a)(4)(A) and 34 C.F.R. § 300.613.) However, the legal citations provided by the District only cover a parent’s request for educational records

outside of the administrative hearing process, and not documents a party is required to produce in response to a SDT. Therefore, the District did not establish that it is not legally required to provide copies of emails regarding Student to comply with Student's SDT.² However, Student's response does not establish that the District did not provide Parents with copies of emails in response to Parents' April 2011 request for Student's educational record.

Therefore, the District established that Student's June 17, 2011 SDT is overly burdensome because the District already produced a copy of Student's educational record on April 26, 2011.³ However, the District did not establish why it should not produce requested documents that were generated after April 26, 2011, or that emails responsive to Student's subpoena after April 26, 2011 should not be produced. Finally, while Student's response indicates that the District did not produce all records in the April 26, 2011 response, Student does not clearly delineate which records the District failed to produce. Student may remediate this issue through a separate SDT that specifically lists the documents Student wishes the District to produce. Accordingly, the District's motion to quash is granted in part and denied in part.

ORDER

The District's motion to quash the SDT served on Kendra Rose is granted in part and denied in part. The District is required to produce all documents responsive to Student's June 17, 2011 SDT that were generated after April 26, 2011.

Dated: July 19, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

² The District Court did hold that emails printed and placed in a student's permanent educational file need to be produced in response to a parental request for a student's educational record. (*S.A. v. Tulare County Office of Education* (E.D. Cal. October 6, 2009) 2009 WL 3296653, ** 6 and 7.)

³ Ms. Rose's declaration also intimates that it would be overly burdensome for the District to respond to Student's SDT because District personnel are not available during the summer break to make copies. This does not establish good cause to quash a SDT, but may be good cause for a continuance.