

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011090491

ORDER DENYING STUDENT'S
MOTION TO QUASH SUBPOENA
DUCES TECUM AS MOOT

On November 15, 2011, Student filed a motion to quash a subpoena duces tecum (SDT) issued by the Dry Creek Joint Elementary School District (District) to require that the Speech Therapy Center of Excellence, produce a copy of any evaluations, assessments or services provided to Student. The SDT requested production of documents at the commencement of the hearing, then scheduled for December 12, 2011. On November 18, 2011, the District submitted an opposition.

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 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 (OAH) 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

In this case, the District served a SDT on the Speech Therapy Center of Excellence that requested that the Speech Therapy Center of Excellence produce specified records on Student. The District's SDT requested the production of these documents on December 12, 2011, the first scheduled day of hearing. On November 28, 2011, OAH granted Student's motion for a continuance, and scheduled the hearing for February 7, 2012. Because of the change of hearing dates, the District will need to issue a new SDT to compel the production of documents. Accordingly, Student's motion to quash is denied as moot, and Student may re-file its motion if the District issues another SDT to Speech Therapy Center of Excellence.

ORDER

Student's motion to quash is denied as moot.

Dated: December 1, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings