

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

YUCAIPA-CALIMESA JOINT UNIFIED  
SCHOOL DISTRICT.

OAH Case No. 2015080292

ORDER GRANTING STUDENT'S  
MOTION TO QUASH SUBPOENAS  
DUCES TECUM

On August 3, 2015, Student filed a complaint with the Office of Administrative Hearings, naming the Yucaipa-Calimesa Joint Unified School District. The case is set for hearing on April 11, 12 and 13, 2016.

On December 11, 2015, OAH granted Student's request to file a second amended complaint. Student's parents seeks reimbursement for private educational expenses during the 2013-2014 and 2014-2015 school years related to parents' unilateral placement of Student at Big Springs Center and School, a non-public school, in Temecula, California.

On January 15, 2016, District, through its attorney, issued a subpoena duces tecum to Chris Huscher, the custodian of records for, and Director of, Big Springs, seeking his personal appearance and production of documents at hearing, including enrollment records, scholarship and donation records, account and payments records, academic records, and attendance records relating to Student's unilateral placement.

On January 19, 2016, Student filed a motion to quash the SDT, because it was overly broad, infringed on Student's privacy, and was premature as Student has the burden of persuasion at hearing. On January 21, 2016, District filed an opposition to that motion, contending that the records were relevant to Student's issues, and District needed the records to defend itself.

A party to a due process hearing under the Individuals with Disabilities Education Act 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).) Special education law provides for the issuance of SDTs by a hearing officer upon a showing of reasonable necessity. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Code of Regulations, title 5, section 3089, specifies that the subpoena provisions of the Administrative Procedure Act found in Government Code sections 11450.05 to 11450.30, do not apply in special education due process proceedings, and therefore OAH analogizes to the relevant portions of the Code of Civil Procedure to make orders quashing a subpoena entirely, modifying it, or directing compliance with it upon

such terms or conditions as the hearing officer shall declare, including protective orders. (See Code Civ. Proc., § 1987.1.)

Student, as petitioner in this matter, has the burden of persuasion at hearing (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]), and will be required to produce evidence to justify his reimbursement claim for the unilateral placement. (See 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c) (2006); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371 [105 S. Ct. 1996, 85 L.ED.2d 385].) District has the right to receive a copy of all documents Student intends to present at hearing at least five business days prior to the due process hearing. (Ed. Code, § 56505, subd. (e)(7).) Until and unless Student fails to timely produce educational records relating to the unilateral placement in dispute, no reasonable necessity for seeking the documents from a nonparty can be shown.

### ORDER

1. The subpoenas duces tecum issued through counsel for District, and directed to the custodian of record for Big Springs, is quashed.

2. This order is made without prejudice to District seeking issuance of a SDT by the ALJ assigned to hear this matter at the pre-hearing conference and upon a showing of reasonable necessity.

DATE: February 16, 2016

DocuSigned by:  
*Caroline Zuk*  
CAROLINE A. ZUK  
Administrative Law Judge  
Office of Administrative Hearings