

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COUNTY OF SAN DIEGO OFFICE OF
EDUCATION.

OAH CASE NO. 2012110566

ORDER DENYING MOTION TO
PRECLUDE TESTIMONY OF
WITNESS

On November 16, 2012, the Parent on behalf of Student (Student) filed a request for due process hearing. The complaint names the San Diego County Office of Education (COE), the local education agency operating the Sarah Anthony School, a juvenile court school, as respondent. In the complaint, Student contends that he was denied a free appropriate public education when the COE failed to place him in a residential treatment center (RTC), provide appropriate mental health services, academic services and occupational therapy.

On December 26, 2012, COE filed its Prehearing Conference Statement which included on its list of potential witnesses Samantha Meadows, a paralegal with the San Diego County Office of the Public Defender.¹ COE lists Ms. Meadows' area of testimony as follows: "Attendance and participation in IEP meetings; Communication with Parents and IEP team regarding Student's [education] program; Development of IEP and responding to Parent's request and concerns; Student's progress; Services provided to Student; Least restrictive environment; other agency involvement and recommendations; implementing the same; Division and coordination of responsibility in Juvenile Hall and Juvenile Court and Community Schools."

On January 23, 2013, the due process hearing (DPH) commenced. On February 11, 2013, the DPH recommenced. On February 14, 2013, Marian Gaston, Deputy Public Defender, specially appeared at the DPH on behalf of Ms. Meadows and orally moved that the ALJ issue an order that the COE be precluded from calling Ms. Meadows as a witness. Ms. Gaston cited that Ms. Meadows is "protected" by the lawyer-client privilege (Evidence Code § 954).

¹ The Public Defender's Office represents Student in his Juvenile Court case.

Section 954 states that “the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed....” Thus, the privilege protects confidential communication between a client and his/her attorney. Evidence Code Section 952 states that the privilege covers “those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment for which the lawyer is consulted.” This includes a non-attorney agent retained by the attorney to assist with representation of the client, such as a paralegal. (*Fireman’s Fund Inc. Co. v. Superior Court* (2011) 196 Cal. App.4d 1263, 1274.) Thus, confidential communications involving Ms. Meadows are subject to the lawyer-client privilege.

Here, COE is not seeking to delve into confidential communications subject to the lawyer-client privilege. Ms. Meadows attended every Individualized Education Program (IEP) team meeting involving Student from the time he entered Juvenile Hall on or about January 16, 2012, through present. She was an active participant in the meetings and acted as an agent for Student and his parent at the meetings and during communications outside the meetings with the COE and its counsel. Thus, Ms. Meadows is a percipient witness to events and may be called as a witness in the DPH.

By Ms. Meadows becoming a witness, any confidential communication between the client and his attorney continues to be subject to the Lawyer-Client privilege.

ORDER

The motion of Ms. Meadows to preclude her testimony is DENIED.

IT IS SO ORDERED.

Dated: February 19, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings