

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013040098
v.	
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT,	
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013090197
v.	
PARENT ON BEHALF OF STUDENT.	ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING MOTION TO QUASH SUBPOENA DUCES TECUM AS MOOT

On October 1, 2013, the undersigned administrative law judge (ALJ) issued an order granting Student's Motion to Quash Subpoena Duces Tecum (SDT) served by the District upon Custodian of Records, Lisa Sporri, Ph.D. On October 1, 2013, after issuance of the order, Anne M. Sherlock, Attorney at Law, filed on behalf of the District an opposition to Student's motion to quash which is being treated as a motion for reconsideration of the order quashing the SDT.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings (OAH) will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Subpoenas Duces Tecum

A party to a due process hearing under the Individuals with Disabilities in 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) and (3).) There is, however, no right to pre-hearing discovery under the IDEA. A parent may obtain his or her child's educational records pursuant to Education Code section 56504. Additionally, pursuant to Education Code section 56505, subdivision (e)(7), parties are entitled to receive copies of all the documents that each party intends to use at hearing, no less than five days prior to the hearing.

Those 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 SDT's. In ruling on such motions, the OAH relies by analogy on the relevant portions of California Code of Civil Procedure, section 1987.1, which 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

Reconsideration

The District asserts that it intended to respond to Student's Motion to Quash within the three business days typically allowed by OAH, and that it was not informed that OAH intended to issue an Order on October 1, 2013.¹ This constitutes new circumstances and the District's request for reconsideration, which is accompanied by a sworn declaration of District's counsel, is timely and accordingly, is granted.

¹Due to an internal miscommunication, the October 1, 2013 Order Granting Motion to Quash Subpoena Duces Tecum contains a factual misstatement. The Order states that OAH staff informed the District on October 1, 2013, that if it planned to respond, it would need to do so forthwith as an order would issue on October 1, 2013. This did not happen and the District was not aware that an order would issue October 1, 2013, until it received the Order.

Motion to Quash

On reconsideration, the ALJ has fully considered the District's opposition to Student's motion to quash. The District served an SDT on Lisa Sporri on September 19, 2013, requesting that records be produced on October 2, 2013, which, at that time, was the first day of hearing for the Student filed request for due process. On September 27, 2013, the District informed the witness in writing that she need not comply with the SDT served on September 19, 2013. The District asserts that it intends to reissue the SDT for a return date of the first day of hearing which is now calendared for November 14, 2013.

In notifying the witness in writing that she need not comply with the subpoena, the District has, in effect, withdrawn its request for records and the District's SDT is moot. Because the hearing on the consolidate matter is now set to begin on November 14, 2013, the District will need to serve another SDT upon Lisa Sporri if it seeks to obtain the requested records. Student's objections to the District's SDT can be raised again if the District issues a new SDT. Accordingly, Student's Motion to Quash is denied as moot.

ORDER

1. The District's motion for reconsideration of the order granting Student's Motion to Quash is granted.
2. Student's Motion to Quash the Subpoena Duces Tecum on Custodian of Records, Lisa Sporri, Ph.D., is denied as moot, without prejudice to its renewal if the District serves a new subpoena.
3. The District is to serve a copy of this Order on Lisa Sporri, Ph.D., by 5:00 p.m. on October 2, 2013.

Dated: October 2, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings