

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014010877

ORDER DENYING STUDENT'S
MOTION TO QUASH SUBPOENA
DUCES TECUM

Parent on behalf of Student (Student) filed a request for due process hearing (complaint) on January 24, 2014, naming the Irvine Unified School District (Irvine).

On April 25, 2014, Irvine, through its counsel, issued and served a subpoenas duces tecum (SDT) seeking records from Student's independent therapist, Robin Morris Psy.D, M.F.T. The SDT contained a Consumer Notice alerting Student of the SDT.

On April 28, 2014, Student filed a motion to quash the SDT based upon the material sought was protected and privileged. On May 1, 2014, Irvine filed an opposition.

APPLICABLE LAW

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), (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 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

In his complaint, amongst other claims, Student alleges that Irvine has failed to provide him a free appropriate public education by failing to designate Student's eligibility category as speech and language impaired instead of autistic-like characteristics.

Irvine asserts that Dr. Morris was an active participant at Student's Individualized Education Program meeting, observed Student at his school placement and assessed him during the relevant time frame, and that various witnesses who will be testifying at the due process hearing have relied upon data attributable to Dr. Morris to support their findings. For these reasons, Irvine contends that it requires Dr. Morris's records and evaluation pertaining to Student to defend against his claims.

Student contends that the requested records are protected by privilege because Dr. Morris is a licensed marriage and family therapist. However, Student has put into issue his mental, emotional and medical condition. Evidence Code 1016 provides for an exception to privilege in such instances.

Therefore, Irvine has established that it is reasonably necessary to its defense against Student's claims and requested relief in this matter to obtain records from Dr. Robin Morris.

ORDER

Student's motion to quash the SDT to Dr. Robin Morris is denied.

DATE: May 02, 2014

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings