

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FOUNTAIN VALLEY SCHOOL
DISTRICT.

OAH CASE NO. 2014010608

ORDER GRANTING, IN PART, AND
DENYING, IN PART, STUDENT'S
MOTION TO QUASH SUBPOENAS
DUCES TECUM

On May 9, 2014, Student's parents on behalf of Student (Student) filed a motion to quash 10 subpoenas duces tecum that had been served by the Fountain Valley School District (Fountain Valley) on individuals and entities who are not parties to the instant case. On May 14, 2014, Fountain Valley filed an opposition to Student's motion.

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, subd. (e).) The hearing officer in a special education due process proceeding may issue subpoenas or subpoenas duces tecum upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Special education law does not specifically address motions to quash subpoenas. In ruling on such motions, 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

Student's due process complaint filed on January 16, 2014, contains three issues for hearing.¹ The issues are paraphrased as follows:

¹ A fourth issue was previously dismissed because it was outside the jurisdiction of OAH.

- 1) Did Fountain Valley deny Student a free appropriate public education (FAPE) by failing to implement Student's last agreed-upon and implemented individualized education program (IEP) or provide Student with special education and related services during the two years prior to the filing of Student's complaint;
- 2) Did Fountain Valley deny Student a FAPE by failing to convene an IEP team meeting during the two years prior to the filing of Student's complaint; and
- 3) Did Fountain Valley deny Student a FAPE by failing to conduct a triennial assessment of Student during the two years prior to the filing of Student's complaint?

In April 2014, Fountain Valley served subpoenas duces tecum on 10 different individuals and entities, seeking production of documents on the first day of hearing in this matter – June 16, 2014.

Student raises several objections to the subpoenas. Student contends that the subpoenas are overbroad and are not limited to the time period at issue in this case. Student argues that any documents prior to January 16, 2012 (the two-year statute of limitation date), are irrelevant to this case.

In addition, Student contends that the documents sought are not relevant to the issues in this case. Citing *Adams v. State of Oregon* (9th Cir.1999) 195 F.3d 1141, Student argues that a school district's IEP offer is evaluated in light of what was objectively reasonable for a district to know at the time the offer was made, not based on information that the district did not possess. Likewise, Student contends that documents such as medical records are far beyond the scope of the limited issues in the instant case.

Fountain Valley contends that the individuals and entities subpoenaed are "private providers" who provided services to Student during years Student was being educated privately by Student's parents. Fountain Valley argues that the documents are necessary to provide Fountain Valley with a "thorough understanding of how Student's needs evolved during the period of his private placement, including the period immediately prior to his return...." Fountain Valley believes that, without such information, Fountain Valley will be unable to defend against Student's claims by showing that Student's "educationally-related needs were being met through his then-current programming."

Fountain Valley also contends that the documents are necessary to determine whether Student's parents were seeking a publicly-funded education for Student during the years he was being privately educated at his parents' expense.

Fountain Valley argues that some of Student's more recent experts relied on reports from the previous experts, so all their documents are relevant, even the ones generated prior to the statute of limitations period.

A review of the subpoenas at issue and the documents filed in this case supports Student's position. Student's issues are procedural issues and appear to depend on an analysis of what Fountain Valley's legal responsibilities to Student were, starting in January 2012. The focus of the case is going to be the actions taken by Fountain Valley between January 2012 and January 2014, in light of the information the district possessed at the time the actions were taken.

Student's contention that these documents are irrelevant is also supported by Student's own actions in this case – Student's witness list filed for the telephonic prehearing conference held in March 2014 did not include most of the subpoenaed individuals and entities as witnesses, nor were their reports or records listed on Student's proposed exhibit list for the case.

The one exception to this is Dr. Ralph Kuechle, who is listed as one of Student's expert witnesses. According to the description of the areas of his testimony listed by Student in the prehearing conference statement, Dr. Kuechle, among other things, assessed Student, participated in IEP meetings, and corresponded with others regarding Student. Based on this description of his testimony, it appears that his records contain information relevant to this case. Even his records prior to the times at issue could be relevant to his opinions. Student cannot have it both ways – Student cannot rely upon a witness's testimony but prevent the district from obtaining the documentation necessary to properly cross-examine that witness.

However, Beth Ballinger, the Reading and Language Center, the Waldorf School of Orange County, Martin Eaton, Julie Berg Ryan, Christine Majors, the Prentice School, Ihab Soliman, and Robert Dobrin/Amen Clinics are not listed as witnesses by Student on Student's February witness list. Fountain Valley's very broad subpoenas to these individuals and entities present a classic fishing expedition.

It is possible that Student may seek to amend Student's witness list to include some or all of the individuals listed above or representatives of the entities listed above. Student could also amend Student's exhibit list to include reports or other documentation from these individuals and entities. For that reason, the motion to quash is only granted to the extent that Student does not amend either the witness list or the exhibit list prior to the hearing in this matter to include any of these individuals or entities. If Student does intend to call those witnesses at hearing or bring in documentation from them, then the motion is denied as to those individuals or entities, and those individuals or entities will be required to comply with the subpoena.

ORDER

1. Student's motion to quash the subpoena duces tecum issued to Ralph Kuechle is denied.

2. Student's motion to quash the subpoenas duces tecum issued to Beth Ballinger, the Reading and Language Center, the Waldorf School of Orange County, Martin Eaton, Julie Berg Ryan, Christine Majors, the Prentice School, Ihab Soliman, and Robert Dobrin/Amen Clinics is granted at the present time.

3. However, if at any time prior to the start of the hearing, Student amends Student's witness list to include any of the individuals or representatives of any of the entities listed in paragraph two above, or if Student revises Student's exhibit list to include documentation from any of these individuals or entities, then the motion to quash is denied as to those particular individuals or entities. At that point, Student shall immediately notify the individuals or entities that the individuals or entities will be required to comply with the subpoena duces tecum and produce documents on the first day of the hearing as set forth in the subpoenas.

IT IS SO ORDERED.

DATE: May 16, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings