BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. REDLANDS UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013030602
REDLANDS UNIFIED SCHOOL DISTRICT AND EAST VALLEY SPECIAL EDUCATION LOCAL PLAN AREA, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013020305 ORDER DENYING STUDENT'S MOTIONS TO QUASH SUBPOENAS DUCES TECUM AS MOOT AND GRANTING MOTION TO DISCLOSE ISSUED SUBPOENAS

On March 15, 2013, Steven A. Figueroa, Educational Advocate for Parent and Student (Student) filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH) naming the Redlands Unified School District (District). On March 25, 2013, OAH granted Student's request to consolidate his complaint with the second amended complaint filed on February 25, 2013, by Vivian E. Billups, Attorney at Law, representing the District and the East Valley Special Education Local Plan Area (SELPA). The consolidated matter is set for hearing on May 9, 2013, with a prehearing conference on May 6, 2013.

On March 30, 2013, Student filed a Request to Quash Subpoena Duces Tecum (SDT) which the District served upon Casa Colina Centers for Rehabilitation (Colina) on March 26, 2013. On April 3, 2013, Student filed a second Request to Quash SDT which the District served on Dr. Fakhoury on March 19, 2013, and a separate Motion for Order to Disclose Recipients of Subpoenas. On April 4, 2013, the District filed a response to Student's Motion to Quash indicating that the District and SELPA have voluntarily withdrawn their subpoenas. OAH has not received a response to Student's motion to disclose all issued subpoenas.

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) 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

Student moved to quash the District's and SELPA's SDT's on the grounds that they did not provide him with a copy of the SDT's or with any advance notice as required by law that Student's personal medical records were being sought. Colina informed Student on March 28, 2013, that it received an SDT seeking Student's medical records on March 26, 2013. Likewise, Dr. Fakhoury's office informed Student on March 29, 2013, that it received an SDT seeking his medical records on March 19, 2013. The District and SELPA acknowledge that they issued subpoenas to appear and SDT's requesting medical records to Dr. Rommie Fakhoury and Dr. Margaret Bauman, and that the Parents' copy and copy for their advocate were not mailed due to clerical error. Ms. Billups represents in her response that upon receipt of Student's Motion to Quash, she became aware of this oversight, called both physicians to verbally cancel the subpoenas and followed-up with a written withdrawal. The District and SELPA did not submit copies of the SDT's or of their written correspondence withdrawing the subpoenas.

Student is correct that he is entitled to advance notice of any requests for the production of his medical or other personal records. The District and SELPA do not dispute this and represent that they have taken corrective steps to withdraw their improperly issued subpoenas. Therefore, Student's motion to quash is denied as moot. Student retains the right to move to quash any future subpoenas or for a protective order as he deems necessary. Furthermore, this Order assumes that Dr. Bauman is with Colina. If she is not, Student may file a motion to quash any subpoenas issued to Dr. Bauman without proper notice to Student.

Student additionally requests that respondents disclose the identities of any other persons or entities upon whom they have served SDT's. Student's concern that other entities may have received SDT's without his knowledge and ability to move to quash or seek protective orders is well taken in light of the District's and SELPA's serious oversight. Student's request for an order that the District and SELPA disclose the recipients of any additional SDT's seeking Student's records is granted.

ORDER

1. Student's motions to quash the subpoenas duces tecum served on Colina and Dr. Fakhoury are denied as moot.

2. Student's request for the disclosure of all recipients of subpoenas is granted. Ms. Billups is to provide Student within 24 hours of the date of this Order, the names of any other persons or entities that have been asked to produce Student's medical or other personal records. Ms. Billups is to further notify, within 24 hours of the date of this Order, those served with an SDT, which does not comply with Civil Code section 1985.3 by providing advance notice to the consumer, that the SDT's served upon them are withdrawn and records are not to be produced pursuant to said subpoenas.[1]

Dated: April 11, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[1] Student additionally requests to bar any evidence the District may obtain "by means of this subterfuge" and that OAH impose sanctions. While the respondents' failure to provide notice is a serious matter, there is no evidence of any intentional misconduct or any indication that the District or SELPA have received any records pursuant to improperly issued subpoenas. This Order does not prohibit Student from renewing his request.