BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016101114
PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016090853 ORDER DENYING MOTION TO QUASH SUBPOENA

On December 2, 2016, Student filed a motion to quash a subpoena duces tecum, issued by Newport-Mesa Unified School District upon Prentice School, Student's current school of attendance. On December 5, 2016, District filed opposition. On February 3, 2017, a prehearing conference was held before Administrative Law Judge Chis Butchko. Attorney Lauren-Ashley Caron appeared on behalf of Student; Alefia Mithaiwala appeared on behalf of District. The parties were given the opportunity to present argument on the motion to quash at the PHC. This order follows.

APPLICABLE LAW

Prehearing Discovery in Special Education Due Process Proceedings

There is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.). Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) The California Education Code provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

Education Code, section 56505, subdivision (a), states that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act for other administrative hearings that provide broader authority for the use of subpoenas. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

Although subpoenas duces tecum are available in special education due process proceedings, their use must be consistent with the legislative and regulatory framework of these proceedings, which accord prehearing access to only to two types of documents: (i) educational records, which parents have the right to request and receive within five business days at any time (Ed. Code § 56504), and (ii) all documents which the opposing party intends to present at hearing, which must be provided not less than five business days prior to the hearing (Ed. Code § 56505, subd. (e)(7)).

Reasonable Necessity for Production

The standard for issuance of a subpoena duces tecum in a special education due process proceeding is "reasonable necessity" (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2)), requiring a specific showing that the requested documents are reasonably necessary for the requesting party to present a case at hearing. This standard is stricter than the general Administrative Procedure Act standard of "good cause," adopted from the civil procedure code. That standard requires the moving party to specify by affidavit "the exact matters or things desired to be produced, [and set] forth in full detail the materiality thereof to the issues involved in the case..." (Code of Civ. Proc., § 1985, subd. (b) [adopted into the APA at Gov. Code § 11450.20, subd. (a)].)

Special education law does not specifically address motions to quash subpoenas. In ruling on such motions, the OAH relies by analogy on the relevant portions of 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. OAH employs this process in ruling on motions to quash, as modified by special education's unique procedures and standards.

DISCUSSION

District's subpoena seeks production of "any and all educational records[1] for [Student] during the 2015/2016 Summer 2016, and 2016/2017 school years, including but not limited to: speech and language or counselling records while at The Prentice School, behavior data, discipline records/entries, internal and external communications (including email, letters, phone logs, communication logs) regarding [Student's] behavior and/or educational progress, attendance records, enrollment paperwork, progress on goals, and report cards." The Prentice School is directed to produce the documents at the District's office on the first day of hearing.

Student contends that the request is overbroad because it may include privileged attorney work product material, and because it would apply to material created after or outside of the process generating the individualized education plans at issue, which would therefore be irrelevant. In addition, Student asserts that the request is vague because it does not specify particular persons whose documents or communications are sought.

At the prehearing conference, District argued that it needed the requested materials to prepare for and counter the testimony of personnel from The Prentice School who Student listed as prospective witnesses. Without such records, District argued, it would have no way of assessing the witnesses' depth or sources of knowledge about Student. Because the propriety of Student's requested relief of prospective placement at The Prentice School is at issue, District contends that records postdating the creation of the IEPs at issue are relevant and necessary. District persuasively argues that the ability to conduct effective cross-examination of employees of The Prentice School and of Student's parents requires that District have access to Student's educational records at the school. Any objection based on relevancy, District argues, is better made to presentation at hearing than to production by subpoena duces tecum.

District has demonstrated that the requested records are reasonably necessary to defend this matter and to present its case as to Student's remedy requests, especially prospective placement at The Prentice School. The request is neither overbroad nor impermissibly vague. Should there be material in Student's educational records that Student or The Prentice School believe to be covered by the attorney work product privilege because they were prepared in anticipation of litigation, a privilege log should be created describing the withheld documents and they should be presented for review by the hearing officer. Student's motion to quash the subpoena is denied.

---

1 Student's motion to quash erroneously referenced District's request as seeking "any and all records for Student." As noted above, District's subpoena was directed only at Student's educational records.

ORDER

Student's motion to quash District's subpoena duces tecum upon The Prentice School is denied. The Prentice School shall produce the documents described in the subpoena duces tecum declaration on the first day of hearing, currently set as February 14, 2017.

DATE: February 6, 2017

DocuSigned by:
Chris Butchko
34B43AF59A2749D...

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings