BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017051407
v.	ORDER DENYING IN PART AND GRANTING IN PART MOTION TO QUASH AMENDED SUBPOENA DUCES TECUM
YUBA CITY UNIFIED SCHOOL DISTRICT.	

Student filed a Request for Due Process Hearing (complaint) on May 31, 2017, naming Yuba City Unified School District. Student made a Motion to File an Amended Complaint on August 4, 2017, which was granted. Student's First Amended Complaint (amended complaint) was deemed filed on August 7, 2017. The hearing was then set for October 3, 2017.

On September 15, 2017, District served a subpoena duces tecum on Parents through their attorneys. Paragraph 2 of the subpoena ordered Parents to appear and testify as witnesses at the due process hearing. Paragraph 5 of the subpoena ordered Parents to produce documents identified in the accompanying affidavit. [1]

Thereafter, OAH continued the hearing to November 7, 2017.

On October 6, 2017, District served Student with an amended subpoena duces tecum, which also demanded Parents appear as witnesses at hearing and that they produce the same documents demanded in the earlier served subpoena duces tecum. On October 16, 2017, Student filed a Motion to Quash Amended Subpoena Duces Tecum.

APPLICABLE LAW

In special education proceedings in California, counsel for parties may issue subpoenas (orders to appear and give testimony) and subpoenas duces tecum (orders to produce any document(s) or paper(s) upon a showing of reasonable necessity by a party). (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2).)

[1] Student's October 13, 2017 Motion to Quash the original Subpoena is moot because the subpoena was amended and superseded by the amended subpoena that is addressed in this Order.

Education records under the IDEA are defined by the Family Educational Rights and Privacy Act (FERPA) to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, OAH relies by analogy on the relevant portions of Code of Civil Procedure. Code of Civil Procedure section 1987.1 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 complaint alleges, among other things, that District failed to give Parents required notices of procedural safeguards in their native language, thereby depriving them of knowledge of their rights. District contests this allegation. Therefore, District's demand (at paragraph 2 of the amended subpoena duces tecum) that Parents appear as witnesses at hearing is justified by District's reasonable necessity to elicit testimony from Parents relevant to District's defenses to Student's allegations.

Paragraph 5 contains two document demands. The first document demand contained in District's amended subpoena duces tecum demands Parent produce at hearing: records of student "… for the period of January 1, 2011 to the present, including assessment results and reports, assessment protocols, student work samples, notes, logs." The complaint indicates Student has been enrolled in District since at least 2009. FERPA requires District to maintain Student's education records during his enrollment. Therefore, it is unreasonable for District to seek production of Student's records from Parents when the law requires District to maintain such records. To the extent the description of records demanded may exceed the definition of education records as defined under FERPA, this document demand fails to meet the requisite "reasonable necessity" standard.

The second document demand contained in the amended subpoena duces tecum demands Parents produce at hearing: "… [c]opies of any and all communications not protected by attorney-client privilege, originating from, sent to, or exchanged with …" 45 specifically identified individuals, whose names appeared as potential witnesses in Student's prehearing conference statements. This document demand contains no limiting date or topical parameters. This request is overbroad and unduly burdensome, and fails to meet the requisite "reasonable necessity" standard.

In establishing "good cause" for demanding production of specified documents the amended subpoena states that the documents requested therein "… are material to the proper presentation of this case, and good cause exists for their production by reason of the following facts:" However, the amended subpoena fails to provide any facts in support of District's claim of good cause for demanding that Parents produce the described documents

at hearing. At the bottom of the document request portion of the amended subpoena District states: "Said records are being requested for the purposes of educational assessment and educational planning by Yuba City Unified School District." This statement appears to be inaccurate and does not constitute facts which would support that District has a "reasonable necessity" to demand Parents produce the demanded records at hearing.

ORDER

1. With regard to paragraph 2 of the Amended Subpoena Duces Tecum dated October 4, 2017, issued by District, which demands Parents to appear as witnesses at the hearing at the District's offices on November 7, 2017, at 9:30 a.m., Student's Motion to Quash Amended Subpoena Duces Tecum is denied.

2. With regard to paragraph 5 of Amended Subpoena Duces Tecum dated October 4, 2017, issued by District, which demands Parents produce records described in two paragraphs set forth on an accompanying affidavit, Student's Motion to Quash Amended Subpoena Duces Tecum is granted.

DATE: October 23, 2017

DocuSigned by:
Christine Arden
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CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings