BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013040098
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013090197 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

On April 3, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request naming the Folsom Cordova Unified School District (District). On September 6, 2013, the District filed a Request for Due Process Hearing naming Student, along with a motion to consolidate. On September 16, 2013, Student filed a motion to amend her complaint. OAH granted the motion to amend and the motion to consolidate and the consolidated matters are now set for hearing on November 14, 2013.

On September 14, 2013, the District served Student with a copy of a subpoena duces tecum (SDT) directed to Custodian of Records, Lisa Sporri, PhD., along with a notice to consumer. The SDT calls for the production of numerous records on October 2, 2013, the previously calendared date for hearing. On September 27, 2013, Student filed a motion to quash the SDT on the grounds that the District's request constitutes impermissible prehearing discovery; the District already has most of the requested records and other requested records do not exist or are not relevant; the request violates privacy rights, and records may be protected by privilege; and the request is overbroad and burdensome and perhaps being used to intimidate or harass Student's expert. Attached to Student's motion is a copy of the notice to consumer and the SDT.

Given that the District's SDT calls for the production of records tomorrow, a date prior to the current calendared hearing date, OAH staff informed the District on October 1,

2013, that if it planned to respond, it would need to do so forthwith as an Order would issue today. OAH has not received a response from the District.[1]

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

The District's SDT calls for Custodian of Records, Lisa Sporri PhD., to produce records on October 2, 2013. When the District issued this SDT, the Student filed case was set to begin hearing on that date. As of September 20, 2013, the dates for the consolidated matter were re-set and hearing is now calendared for November 14, 2013.

A party does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulations securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself. Because the District's SDT calls for the production of records prior to the date of hearing, it

[1] The determinative factor in the analysis of this issue is the hearing date, which has been moved from October 2, 2013 to November 14, 2013, which is undisputed.

constitutes prehearing discovery which is not permissible in special education proceedings.[2] The District will need to serve another SDT upon Lisa Sporri in an effort to obtain the requested records for hearing.

While Student raised numerous additional grounds to quash the SDT, those grounds need not be addressed here. Student's further objections to the District's SDT can be raised again if the District issues and serves a new SDT upon Lisa Sporri. Accordingly, Student's Motion to Quash is granted.

ORDER

1. Student's Motion to Quash the Subpoena Duces Tecum on Custodian of Records, Lisa Sporri, is granted.

2. The District shall serve a copy of this Order on Custodian of Records, Lisa Sporri, by 12:00 p.m. on October 2, 2013.

Dated: October 1, 2013

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

[2] This Order makes no finding that the District intended to obtain the requested records prior to hearing as the date for return on the subpoena was the date previously set for hearing.