BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SONORA UNION HIGH SCHOOL DISTRICT, SUMMERVILLE UNION HIGH SCHOOL DISTRICT, SOULSBYVILLE ELEMENTARY SCHOOL DISTRICT, TUOLUMNE COUNTY SUPERINTENDENT OF SCHOOLS.

OAH CASE NUMBER 2019070252

ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM FOR ADMINISTRATIVE RECORDS

On July 8, 2019, Student filed a Due Process Hearing Request with the Office of Administrative Hearings, referred to as OAH, naming Sonora Union High School District, Summerville Union High School District, Soulsbyville Elementary School District, and Tuolumne County Superintendent of Schools as parties. Student identifies as an issue for hearing whether the respondents denied her a free appropriate public education by failing to offer a residential placement for the 2018-2019 and 2019-2020 school years. This matter is scheduled for hearing beginning October 15, 2019.

On September 20, 2019, counsel for respondents served Parent with a subpoena duces tecum for records pertaining to the administrative hearing Parent brought before the State Hearings Division of the California Department of Social Services in matter SHD-104542490 to pursue funding for Student's residential placement at Diamond Ranch Academy. Specifically, respondents seek the production of pleadings, evidence and judicial determinations regarding the reasons for Student's residential placement and recordings or transcripts of the administrative proceeding.

On September 27, Student filed a motion to quash the subpoena duces tecum on the grounds that respondents failed to state that Parent has the requested records in her possession, and that the requested documents are not material to the issues at hearing and there is no showing of reasonable necessity for the records.

On October 2, 2019, respondents filed an opposition to Student's motion to quash supported by a declaration of counsel, Student's enrollment application at Diamond Ranch, and the August 2019 decision in the administrative matter SHD-104542490 denying reimbursement for Student's residential placement.

APPLICABLE LAW

In special education proceedings in California, the hearing officer shall have the right to issue subpoenas for witness to appear and testify, and to issue subpoenas duces tecum for the production of documents upon a showing of reasonable necessity by a party. (Cal. Code of Regs., tit 5 § 3082, subd. (c)(2).) Special education law does not specifically address what additional requirements apply to such a subpoena. In this regard, California Code of Regulations, title 5, section 3089 specifies that the subpoena provisions for the Administrative Procedure Act (Government Code sections 11450.05 to 11450.30) do not apply in special education due process haring matters. Therefore, it is

appropriate to analogize to the relevant portions of the California Code of Civil Procedure for guidance.

Code of Civil Procedure, section 1985, subdivision (c) provides that an attorney of record in an action may sign and issue a subpoena duces tecum to require production of the matters or things described in the subpoena. Section 1985, subdivision (b) requires that a subpoena for trial specify the exact documents to be produced, setting forth in full detail the materiality of those documents to the issues in the case.

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on a motion to quash a subpoena duces tecum, OAH also relies by analogy on the relevant portions of 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 argument that the California State Department of Social Services matter regarding reimbursement of Student's placement at Diamond Ranch is not relevant to the issues in her due process complaint is not persuasive. Although the legal standard as to whether the Adoptive Assistance Program should fund Student's residential placement is different from the determination of whether the respondents denied Student a free appropriate public education by failing to offer residential placement, both cases involve the issue of Student's need for residential placement. The subpoena duces tecum seeks records relevant to Student's need for and the reasons behind Student's residential placement at Diamond Ranch. These records are reasonably necessary to respondent's defense that Student's residential placement was not for

educational purposes. As Parent brought the administrative funding matter before the State Hearing Division, it is reasonable to conclude that she has copies of the requested administrative records.

However, the parties note that the Department of Social Services refused to release records of the administrative proceedings pursuant to Welfare and Institutions Code section 827. That section governs the confidentiality of juvenile court records. To the extent any of the requested documents include confidential juvenile court records, this tribunal does not have the authority to authorize their release. This Order does not require Parent to release Student's juvenile court records.

ORDER

1. Student's motion to quash the subpoena duces tecum directing Parent to produce records from the administrative matter of SHD-104542490 is denied.
2. Parent is not required to produce any confidential juvenile court records pursuant to respondents' subpoena duces tecum.

DATED: October 4, 2019

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Theresa Ravandi
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Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings