BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017041203 ORDER GRANTING STUDENT'S MOTION TO QUASH SUBPOENAS DUCES TECUM ON PRENTICE SCHOOL, THE ANXIETY AND DEPRESSION CENTER, AND U.C. IRVINE MEDICAL CENTER WITHOUT PREJUDICE

On April 24, 2017 Student filed a Request for Due Process Hearing (complaint) naming Irvine Unified School District. OAH initially set the matter for hearing on June 15, 2017. On May 26, 2017, District served subpoenas duces tecum (SDT) on the Custodians of Records for Prentice School, the Anxiety and Depression Center, and U.C. Irvine Medical Center. On June 1, 2017, Student filed this Motion to Quash all three SDTs. OAH received no opposition from District.

APPLICABLE LAW

In general OAH has adopted Code of Civil Procedure, sections 1985 through 1985.4, regarding the issuance, service and standards for subpoenas and SDTs in administrative law hearings. In special education hearings however, the standards for issuance of an SDT is more rigorous and requires a showing of "reasonable necessity." (5 C.C.R. § 3082(c)(2).)

In order to determine whether an SDT meets the requirement of reasonable necessity, the SDT must specify the exact matters or things desired to be produced, setting in forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his/her possession or under his/her control.

Special education law does not specifically address motions to quash subpoenas or SDTs. OAH relies by analogy on relevant portions of Code of Civil Procedure, section 1987.1, which provides that the court: "…may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person."

Additionally, with the exception of education records, special education law does not contain any provision authorizing prehearing discovery. While SDTs are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings, which accord prehearing access to only to production of educational records within five business days at any time (Ed. Code, § 56504), and copies of all documents the parties intend to use at hearing, not less than five business days prior to the hearing. (Ed. Code, § 56505, subd. (e)(7).) The applicable statutes and regulations securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself. (20 U.S.C. § 1415(h); Ed. Code, § 56505, subd. (e).)

DISCUSSION

District has served three SDT's which will be discussed individually.

1. Prentice School: District's declaration indicates it is seeking any and all records for Student from the 2015-2016 school year to present, "including but not limited to assessment data, protocols, notes, observation records, reports, charts, progress reports and all documents including emails and other electronic documents, related to your communication with Student, his parents, and attorneys, and any and all documents related to the provision of services to Student." District further states, "Good cause exists" for the production of [the above documents] because Student has alleged that District has failed to provide an appropriate offer of placement, services and goals for Student. The documents are necessary to establish what Student's unique needs and present levels of functioning were and are during his enrollment at the Prentice School. "Good cause exists" for the production of these documents because Student' needs and functioning levels are necessary for the formation of District's legal defenses. Further "good cause" exists for the production of the above documents as Student has requested reimbursement for costs of educational expenses, including his tuition at the Prentice School, as well as for prospective funding of Prentice.

District's SDT served on the Prentice School Center is quashed for several reasons. First, District's request for production of "any and all" is overbroad in relation to District's declared need to establish Student's unique needs and present levels of performance. Second, District incorrectly cited "good cause" as the standard for issuance of the SDT.[1] Special education law requires that the party issuing the SDT establish reasonable necessity. At no point in its declaration does District establish reasonable necessity for the requested information, or that the items requested were unavailable by other means, i.e. why Student cannot produce receipts for reimbursement, or why there was reason to believe specific items, were utilized or relied upon in rendering opinions, or presented in information

[1] District has used the SDT form utilized by OAH. (Form OAH-1). This form is generic in nature, and references the term "good cause" which can be the legal standard utilized in other matters of OAH general jurisdiction cases. The "good cause" reference on the form, does not negate the legal standard of reasonable necessity for special education matters.

presented to District. Lastly, in its current form, District's SDT constitutes prehearing discovery. While some of the information requested may be relevant to rebuttal of Student's evidence and testimony to be presented at hearing, in no manner can the broad area of information sought be construed as anything other than prehearing discovery. Further, District has requested the documents sought be presented to District on June 15, 2017, which is grossly premature to the hearing date of September 12, 2017. Thusly, Student's Request to Quash the SDT served on the Prentice School is granted without prejudice.

2. Anxiety and Depression Center: District's declaration indicates it is seeking any and all records for Student from the 2014-2015 school year to present, "including but not limited to assessment data, protocols, notes, observation records, reports, charts, progress reports and all documents including emails and other electronic documents, related to your communication with Student, his parents, and attorneys, and any and all documents related to the provision of services to Student." District further states, "Good cause exists" for the production of [the above documents] because Student has alleged that District has failed to provide an appropriate offer of placement, services and goals for Student. The documents are necessary to establish what Student's unique needs and present levels of functioning were as documented through the Anxiety and Depression Center's assessments and contacts with Student. "Good cause exists" for the production of these documents because Student' needs and functioning levels are necessary for the formation of District's legal defenses.

District's SDT served on the Anxiety and Depression Center is quashed for similar reasons. District's request for production of "any and all" is overbroad in relation to District's declared need to establish Student's unique needs and present levels of performance. District utilizes the good cause standard and has not cited reasonable necessity for the requested information. District has not provided any information to indicate a reason to believe specific items, i.e., assessments and protocols, were utilized or relied upon in rendering opinions, or presented in information presented to District. Lastly, District's SDT constitutes prehearing discovery. While some of the information requested may be relevant to rebuttal of Student's evidence and testimony to be presented at hearing, the broad area of information sought constitutes prehearing discovery. District has requested the documents sought be presented to District on June 15, 2017, which is premature to the hearing date of September 12, 2017. Thusly, Student's Request to Quash the SDT served on the Anxiety and Depression Center is granted without prejudice.

3. U.C. Medical Center: District's declaration indicates it is seeking any and all records for Student from the 2014-2015 school year to present, "including but not limited to assessment data, protocols, notes, observation records, reports, charts, progress reports and all documents including emails and other electronic documents, related to your communication with Student, his parents, and attorneys, and any and all documents related to the provision of services to Student." District further states, "Good cause exists" for the production of [the above documents] because Student has alleged that District has failed to provide an appropriate offer of placement, services and goals for Student. The documents are necessary to establish what Student's unique needs and present levels of functioning were or are in areas including social emotional functioning, behavior, and/or any diagnosis, or

treatment recommendations relating to autism. "Good cause exists" for the production of these documents because Student' needs and functioning levels, including the aforementioned areas, are necessary for the formation of District's legal defenses.

District's SDT served on U.C. Irvine Medical Center is quashed. District's request for production of "any and all" is overbroad in relation to District's declared need to establish Student's unique needs and present levels of performance, and District has not reasonable necessity for the documents sought. In seeking medical records, District is requesting legally protected and confidential information. Thusly, District must allege a reasonable necessity for such information, including more than a de minimus relevance to Student's educational issues. Further, District has not established it cannot obtain reasonably necessary documents from other available sources, i.e., requesting Student's witnesses(s), such as Dr. Passaro to produce documents reviewed or relied upon in assessing Student or forming his opinions and recommendations. District's SDT constitutes prehearing discovery. Again, some of the information requested may be relevant to rebuttal of Student's evidence and testimony to be presented at hearing, the broad area of information sought constitutes prehearing discovery. District has requested the documents sought be presented to District on June 15, 2017, is premature to the hearing date of September 12, 2017. Thusly, Student's Request to Quash the SDT served on U.C. Irvine Medical Center is granted without prejudice.

IT IS SO ORDERED.

DATE: June 19, 2017

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Peter Paul Castillo for
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings