BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022060214

ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM

SEPTEMBER 6, 2022

On June 8, 2022, Student filed a request for due process naming the San Diego Unified School District. The matter is now calendared for due process hearing beginning on September 13, 2022.

On August 18, 2022, San Diego served a subpoena duces tecum on the Echo Horizon School, which Student apparently attended for part of the time period at issue in the dispute. The subpoena calls for the production of a wide variety of records relating to Student's time at Echo Horizon.

On September 1, 2022, Student filed a motion to quash the subpoenas on the grounds that it was overbroad and unduly burdensome, called for irrelevant records,

and is in part directed to a time period that Student alleges is not at issue, and is subject to a settlement agreement.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act has the right to present evidence and compel the attendance of witnesses in "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); see also Ed. Code, § 56505, subd. (e).)

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)." (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) This requirement mirrors that required by Code of Civil Procedure section 1985, subdivision (b), which requires:

> A copy of an affidavit shall be served with a subpoena duces tecum . . ., showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting 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 or her possession or under his or her control.

The good cause requirement is met by a factual showing of why the requested documents or things are material and relevant to the litigated issues. (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, the Office of Administrative Hearings, referred to as OAH relies by analogy on the relevant portions of the 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 motion fails because the records sought are not his records. He has the burden to show that his motion has merit, and he does not demonstrate that he has any standing to challenge a subpoena for production of records of a third party. He does not cite any statute, regulation or decision allowing a third party to seek to quash a subpoena for the records of someone else.

In addition, Horizon has not filed a motion to quash the subpoena, which suggests that its custodian of records is willing to provide the records sought, but Student somehow asserts a right to override that determination. Student cites no authority for that proposition either.

Student's moving papers claim that the documents sought contain attorney-client communications and work product. Student does not identify the attorney or the client who might have the privilege. Student's counsel does not claim to be that attorney and the identity of the client is not stated. No declarations accompany the motion to quash, leaving no factual basis for evaluating these claims.

Finally, the attorney-client and work product privileges can be waived by disclosure. It appears that someone has disclosed the alleged attorney-client communications and work product to Horizon, but the motion does not describe who

that was or how that occurred. Nothing in this order prevents the party holding the privilege to raise it at hearing. If raised, the ALJ at hearing can address the merits of the objection when reviewing the documents.

ORDER

Student's motion to quash the subpoena duces tecum for the records of Horizon is DENIED.

IT IS SO ORDERED.

Charles Marson

Charles Marson
Administrative Law Judge
Office of Administrative Hearings