BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT , v. ROCKLIN UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018090118
ROCKLIN UNIFIED SCHOOL DISTRICT , v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018110472 ORDER GRANTING MOTIONS TO QUASH SUBPOENAS DUCES TECUM

On or about October 15, 2018, Student served five subpoenas duces tecum on Rocklin requiring the production at hearing of documents in Rocklin's possession.

In motions filed on October 19 and 23, 2018, Rocklin moved to quash four categories of information subpoenaed by Student. On October 23, 2018, Student filed oppositions to those motions.

APPLICABLE LAW AND DISCUSSION

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.). Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings, but does not confer the right to prehearing discovery. (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 of Regs., tit. 5, § 3082, subd. (c)(2).) The law accords prehearing access to two types of documents: (i) parents have the right to request and receive the pupil's

educational records within five business days at any time (Ed. Code, § 56504), and (ii) the parties are entitled to receive copies of all the documents the educational agency intends to use at hearing, not less than five business days prior to the hearing. (Ed. Code, § 56505, subd. (e)(7).)

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. Section 1987.1 of that Code 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

Staff Emails Concerning Student

Student has subpoenaed any and all emails between January 17, 2017 and the present to or from district staff regarding Student. The request is qualified by the statement that the emails sought directly relate to Student and are maintained by an educational agency. Student argues that in its Response to Student's complaint, Rocklin denied his allegation that the district "often" called his home to have him picked up early; Rocklin asserted that a "review of district records and staff accounting" did not substantiate that allegation. Student now wants an equal opportunity to review district records and staff accounting to test the truth of that allegation, and wants to review records to "explore" the bases for the district's defenses.

Ordinarily discovery of this kind is available in civil matters if disclosure of the information sought is reasonably likely to lead to the discovery of admissible evidence, but reasonable necessity is a significantly higher standard. Student has not shown a reasonable necessity for the production of all email concerning Student since January 17, 2017. The request is substantially overbroad, since it is not limited by reference to specific issues in these matters but calls for every email concerning Student sent or received since his enrollment. Student already has received what Rocklin asserts were all of Student's records. That assertion is supported by a declaration from one of Rocklin's staff and not directly contested by Student.

Moreover, to the extent that Rocklin makes the same claim at hearing, it will be the evidence at hearing that determines the accuracy of its denial, and Student will have access to that evidence when documentary evidence is exchanged. What matters to the outcome of the case is the evidence Rocklin uses to try to prove its denial at hearing; not what underlay an assertion in its pleading. Student's claim of a right to an equal opportunity review of district records has no apparent basis in law, and a desire to explore the bases of district defenses does not rise to a showing of reasonable necessity. The subpoena duces tecum for this category of documents is quashed.

Emails to and from Parent

Student has subpoenaed any and all emails from January 17, 2017 to the present to or from Student's Parent regarding Student. Normally, Parent would already have these emails, and Student makes no claim that he does not. There is no reasonable necessity for the production of documents Student already has. The subpoena duces tecum for this category of documents is quashed.

Videos Taken on the School Bus

Student has subpoenaed any and all videos taken on the school bus that transported Student on May 30, 2017, and on May 1-4, 7-11, and 14-15, 2018. These dates correspond to alleged incidences on the school bus in which Student engaged in undesirable behaviors. Rocklin asserts that both school staff and on at least one occasion Student's sister were percipient witnesses to this behavior, so the video is not necessary to Student's case. Student does not disagree that witnesses are available, but would prefer to have the video of the incidents as more reliable evidence than testimony.

Rocklin also established by declaration that at nearly all relevant times other students, including primarily disabled students, were on the bus and were captured by the videos. Rocklin correctly argues that any nonconsensual production of the videos would violate state and federal laws governing the confidentiality of information about those other students. Student responds by arguing that these privacy interests can be accommodated by an in camera review of the videos by the judge, but does not suggest redaction is possible. Since both parties have other ways of proving the facts of these incidents, and since production would substantially intrude upon the confidentiality of the records of other students, the subpoena duces tecum for this category of documents is quashed.

Sign-in and Sign-out Logs from Valley View Elementary School

Student has subpoenaed any and all sign-in and sign-out logs for Valley View Elementary School for the 2016-2017 school year for the purpose of establishing Student's attendance, or lack of it. Rocklin states it will voluntarily produce versions of these logs from which the identities of other students have been redacted, and both parties request that the ALJ review the unredacted logs in camera to ensure that all references to Student have been preserved in the redacted versions Apparently these logs contain only the names of other students, not any details about them, so in camera review would not significantly or necessarily implicate confidentiality interests. The subpoena duces tecum for this category of documents is quashed except insofar as redacted logs can be produced, and if any dispute arises over the redaction, the ALJ will compare the redacted and unredacted logs in camera.

ORDER

1. Student's subpoenas duces tecum for the following categories of information are quashed in their entireties:

a) Any and all emails between January 17, 2017 and the present to or from district staff regarding Student;

b) Any and all emails from January 17, 2017 to the present to or from Student's Parent regarding Student; and

c) Any and all videos taken on the school bus that transported Student on May 30, 2017, and on May 1-4, 7-11, and 14-15, 2018.

2. Student's subpoena duces tecum for any and all sign-in and sign-out logs for Valley View Elementary School for the 2016-2017 school year is quashed in part. Rocklin need not produce unredacted logs to Student. It must produce redacted logs showing only the attendance of Student, not others. If any dispute arises over the redaction, the ALJ will compare the redacted and unredacted logs in camera.

DATE: October 26, 2018

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings