BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PLEASANTON UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018071095 ORDER DENYING IN PART, AND GRANTING IN PART STUDENT'S MOTION TO QUASH A SUBPOENA DUCES TECUM FOR RECORDS FROM FUSION ACADEMY

On September 27, 2018, Student filed a motion to quash a subpoena duces tecum for records from Fusion Academy issued by Pleasanton Unified School District's attorney on September 25, 2018.[1] On the same date Student's attorney filed a declaration in support of the motion to quash. On October 1, 2018, Pleasanton filed an opposition to the motion to quash.

APPLICABLE LAW

Subpoenas in Special Education Due Process Hearings

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)." Thus, subpoenas are available to require the production of information that is reasonably necessary in order for a party to present their case at hearing. In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in the Code of Civil Procedure. Section 1985 of that Code governs the issuance of subpoenas. In accordance with that provision, OAH allows attorneys to issue subpoenas to witnesses to

[1] On September 27, 2018, Student filed motions to quash five separate subpoenas duces tecums issued to five separate entities by Pleasanton's attorney. Student's attorney has also filed at least one separate declaration to support the motion to quash for each entity. Pleasanton filed an opposition to each motion to quash on October 1, 2018. A separate order granting or denying each motion to quash will be issued as to each entity.

require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced at hearing. Parties must also comply with the consumer protections of Code of Civil Procedure section 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services*, (1993) 17 Cal.App.4th 1072.)

Motions to Quash in Special Education Proceedings

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, 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

In his motion to quash the subpoena duces tecum for records from Fusion, Student argues that Pleasanton's attorney is asking for records to be produced before the date of hearing, and there is no prehearing discovery in special education due process hearings. Instead parties are required to produce documents they intend to introduce at hearing and provide them to the other party five business days prior to hearing. (Ed. Code § 56505, subd. (e)(7).) Pleasanton attached a copy of the entire subpoena for Fusion's records to its opposition, and the subpoena asks that Fusion either provide the documents on the first day of hearing, which is October 16, 2018, at the hearing, or in the alternative produce the documents at the attorney's office on October 10, 2018, five business days before the hearing. Pleasanton claims in its opposition that October 10, 2018, is five business days before the beginning of the hearing and therefore should not be considered "discovery," and cites, in support of this contention, an order in OAH Case Number 2012110566. However, OAH's orders and decisions in special education due process cases are not precedential. (Cal. Code Regs. tit. 5, § 3085.) The requirement that records only be produced at hearing does not depend on the characterization of a subpoena as "discovery;" it turns on the language of section 3082, subdivision (c)(2) of title 5 of the California Code of Regulations.

Student's attorney makes an additional argument in her declaration supporting the motion to quash. She asks that the subpoena for Fusion records be quashed because the request "is overly broad and does not limit itself to the facts alleged in [Student]'s complaint." This argument is not made in the motion itself. Pleasanton argues that it requires documents from Fusion because Student is asking reimbursement for his placement at Fusion for this school year and in essence is claiming that this placement is appropriate. The declaration of the attorney in the subpoena duces tecum itself states Student has filed a complaint against Pleasanton asking that Pleasanton fund the Fusion placement, and it requires the documents to respond to the allegations.

Student is correct that Pleasanton cannot require the documents to be produced at any time prior to hearing, because there is no prehearing discovery in these matters. The right to a subpoena in special education proceedings is a hearing right, not a prehearing right. (5 Cal.Code Regs. § 3082, subd. (b)(2).) Accordingly, the portion of the subpoena duces tecum requiring Fusion to produce documents to Pleasanton's attorney on October 10, 2018, is quashed. However, Student is incorrect in concluding that Pleasanton's subpoena duces tecum for Fusion is "overly broad." Student is asking that Pleasanton pay for his placement at Fusion, because he claims it is the most appropriate placement for him. Pleasanton, as part of its defense, must be able to refute Student's evidence in this regard. Records from Fusion may assist Pleasanton in doing so.

Student's motion to quash the subpoena duces tecum for records from Fusion is granted, to the extent that Pleasanton is asking for the records in advance of the starting date of the hearing. In all other regards, the motion to quash is denied.

ORDER

1. Student's motion to quash the subpoena duces tecum for records from Fusion Academy is granted in regards to the request that Fusion produce records by tendering them at Pleasanton's attorney's office no later than October 10, 2018.

2. Student's motion to quash the subpoena duces tecum for records from Fusion academy is denied in all other regards. Fusion shall produce the requested records at the location of the hearing on October 16, 2018.

IT IS SO ORDERED.

DATE: October 10, 2018

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings