BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. MT. DIABLO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020784 ORDER DENYING MOTION TO COMPEL PRODUCTION OF DOCUMENTS

On February 21, 2013, Student filed a Due Process Hearing Request (complaint) against the Mt. Diablo Unified School District (District) with the Office of Administrative Hearings (OAH). This matter is set for a prehearing conference for July 29, 2013, and hearing on August 6 - 9, 2013.

On June 21, 2013, Attorney for Student served a Subpoena Duces Tecums (SDT) on the Attorney for the District, which requested records from the District records regarding its assessment of Student. Student requested that the District produce the records by June 28, 2013. The District did not produce the requested records and on July 10, 2013, Student filed a motion to compel production of documents. The District did not submit a response.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing (20 U.S.C §1415(h)(2); Ed. Code, § 56505, subds. (e)(2) and (3).) There is, however, no right to pre-hearing discovery under the IDEA. A parent may obtain his/her child's educational records (Ed. Code § 56504).) Additionally, parents are entitled to receive copies of all the documents the District intends to use at hearing, no less than five business days prior to the hearing (Ed. Code § 56505, subd. (e)(7).)

The provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal Code Regs., tit. 5, § 3089.) Subdivision (c)(2) of section 3082 of title 5 of the California Code of Regulations provides in pertinent part that 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 (SDT)

(order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party)."

Special education law does not specifically address motions to quash subpoenas or SDT's or to compel production of documents. In ruling on such motions, the OAH relies by analogy on the relevant portions of California 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

Student's SDT requests various documents relating to Student, and that the documents be produced to Student's attorney by June 28, 2013. While Student may be entitled to the requested documents, that analysis need not be conducted here because Student's SDT requests the production of documents before hearing and applicable Federal and California statutes and regulations do not provide for prehearing discovery in special education proceedings. Accordingly, Student's motion to compel production of documents is denied because Student's SDT constitutes prohibited prehearing discovery.[1]

ORDER

Student's motion to compel production of documents is denied.

Dated: July 16, 2013

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

[1] Nothing in this order prevents Student's attorney from re-serving the SDT compelling the production of the requested documents at hearing. Additionally, nothing precludes Parent, or the attorney for Student on behalf of Parent, from requesting the Student's educational records pursuant to Education Code section 56504. The District may raise any evidentiary objections at the July 29, 2013 prehearing conference.