BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA MARIA-BONITA SCHOOL DISTRICT AND SANTA MARIA JOINT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018070289 ORDER DENYING MOTION TO QUASH A SUBPOENA DUCES TECUM FOR RECORDS FROM SANTA MARIA JOINT UNION HIGH SCHOOL DISTRICT

On October 22, 2018, Santa Maria Joint Union High School District filed a motion to quash a subpoena duces tecum issued by Student's attorney on October 15, 2018, to Frances Evans, Santa Maria's Director of Special Education, seeking production of documents, supported by a declaration by Santa Maria's attorney. Student withdrew the subpoena because it had a typographical error on October 25, 2018, and reissued the subpoena to Santa Maria on the same date. At the Prehearing Conference on October 26, 2018, Student represented that the substance of the subpoena had not changed, and the only alteration was the correction of a typographical error. Santa Maria was asked during the PHC if it would again seek to quash the subpoena and, if so, if it would like to proceed on the substance of the motion it had filed against the withdrawn subpoena without making a new motion. Santa Maria answered both questions in the affirmative. Student filed an Opposition to the motion to quash on October 30, 2018.

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 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 complaint, Student asserted that Santa Maria failed to assess him in all areas of suspected disability, failed to implement his individualized educational program, failed to offer measurable goals in his IEP, failed to make a clear offer of a free appropriate public education, failed to offer or provide appropriate academic instruction, and failed to offer or provide appropriate behavior supports or a behavior support plan.

In its motion to quash the subpoena duces tecum, Santa Maria argues that the subpoena be quashed because the request is overly broad, fails to demonstrate necessity or materiality, and seeks privileged documents.[1] Santa Maria argues that the SDT seeks "potentially hundreds of email exchanges, letters, personal notes, or other writings" of "marginal relevance." It notes that Student is seeks documents dating from July 6, 2016, to the present date, but Student did not attend Santa Maria until the fall of 2017. Santa Maria contends that Student already has copies of communications sent directly to his parents and has received copies of his student records, making production unnecessary. In addition, Santa Maria asserts that the request would include privileged communications with counsel. Finally, Santa Maria raises the concern that documents produced here would be used by Student in preparation for a potential further lawsuit.

Student argues that the request is not overbroad, as it is limited by its terms to communications about Student's IEP development, assessments, behavior supports, behavior incidents, and academic instruction. These are the areas at issue in this matter. He states that he is seeking documents that are not included under the limited definition of "student

[1] Santa Maria argues that there is no discovery in special education proceedings before OAH. There is no prehearing discovery in such cases, but the right to subpoena documents in a special education proceedings is a hearing right, not a prehearing discovery right. (5 Cal. Code Regs. §3082, subd. (b)(2).)

records," which he cannot otherwise obtain. Further, he notes that the request is limited to communications from the time period at issue, and that he does not seek attorney-client communications.

The production requested from Santa Maria[2] covers all communications, including "emails, text messages, recorded interviews, [and] phone messages." However, Santa Maria is incorrect in concluding that the SDT is overly broad, as Student does not seek, as it contends, "any and all communications made 'by any employee, related to' " Student at any time. The subpoena explicitly limits the request to communications made after July 6, 2016, which are related to Student's IEP development, assessments, behavior supports, behavior incidents, and academic instruction. To the extent that the subpoena seeks production of documents from before the time Student started attending Santa Maria, the request is not overbroad. If no such documents exist, none need be provided. It is not, however, impossible to image that a communication may have been generated regarding Student prior to his first day of attendance at the school, and it is proper to request its production.

The subpoena explicitly excludes Student's educational records previously provided to him. Student has disclaimed in his Opposition any intent to seek privileged communications between Santa Maria and its counsel. Should Santa Maria be uncertain whether a particular communication is covered by the privilege, it should note the communication in a privilege log. Santa Maria's concerns about Student's possible future use of this production is not a reason to deny the production of material relevant and necessary to the resolution of this action.

No authority supports Santa Maria's contention that it need only produce to Student the documents it intends to present at hearing. Santa Maria must make a responsive production to Student's SDT at the start of the hearing of this matter.

[2] Santa Maria also argues that this subpoena is duplicative of the one served upon the Santa Maria Bonita School District. It is not improper to serve similar subpoenas upon separate entities. To the extent that the entities jointly maintain these records or the required productions are duplicative, the entities may coordinate their productions to eliminate redundancy.

ORDER

Santa Maria's motion to quash the subpoena duces tecum for records is denied. Santa Maria shall produce the requested records at the location of the hearing at the commencement of the hearing, currently set for November 6, 2018.

IT IS SO ORDERED.

DATE: November 1, 2018

DocuSigned by:
Butchko, Chris
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings