BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018070377
v.	ORDER GRANTING FRUITVALE SCHOOL DISTRICT'S MOTION TO QUASH SUBPOENA DUCES TECUM
FRUITVALE SCHOOL DISTRICT.	

On July 5, 2018, Parent on behalf of Student filed a request for due process with the Office of Administrative Hearings, naming Fruitvale School District. Student's complaint alleges that Fruitvale denied Student a free appropriate public education by, in pertinent part, failing to provide timely independent educational evaluations.

On July 18, 2018, Student's attorney served a subpoena duces tecum on Becky Rocha during the resolution session held on that day in this case.[1] The subpoena directs Ms. Rocha to produce all contracts Fruitvale entered into with a Dr. Suter, a Dr. Braun, and a Dr. Graziano-Shively. The subpoena states that Ms. Rocha must appear as a witness and produce the documents on August 9, 2018, at 11:30 a.m., at Fruitvale's offices. In the alternative, Ms. Rocha is directed to mail the records to Student's attorney prior to August 9, 2018.

Fruitvale filed a motion to quash the subpoena on August 6, 2018. Fruitvale contends the subpoena is invalid on its face because it is returnable prior to the first day of hearing scheduled in the case. The hearing is scheduled to begin on August 29, 2018, at Fruitvale's offices.

Student filed an opposition to the motion to quash on August 9, 2018. Student spends considerable time in the opposition addressing issues not raised in Fruitvale's motion to quash. With regard to Fruitvale's contention that the subpoena is invalid because it is returnable prior to the scheduled start of the hearing, Student states that the return date on the subpoena was a typographical error, and that the date should have been August 29, 2018, the first date of the hearing. Student then states that he has caused an amended subpoena to be served by certified mail on Ms. Rocha on August 8, 2018, which cures the error of the first subpoena. Student contends because he has valid reasons for requiring the records, OAH

[1] Neither party in their pleadings identified who Ms. Rocha is. Fruitvale does not, however, contend that Ms. Rocha was not authorized to accept service of the subpoena on its behalf.

should order Fruitvale to produce the records, apparently irrespective of the facial invalidity of the original subpoena.[2] The declaration of Student's attorney, filed in support of Student's opposition to the motion to quash, fails to address the issues raised in Fruitvale's motion. Rather, the declaration addresses the wholly irrelevant issue of the attempts Student's counsel has made to find a provider to administer the independent educational evaluations Student has requested and which are part of the bases of his due process complaint.

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 (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

Education Code, section 56505, subdivision (a), provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].) While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings, which accord prehearing access to only 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 parties intend 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, 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.

Student's subpoena directs Ms. Rocha to produce the subpoenaed records to Student's attorney no later than August 9, 2018, 20 days prior to the first day of hearing. Student has

[2] Student does not explain why the original subpoena duces tecum was not withdrawn when Student's attorney noticed the error.

no statutory right to pre-hearing discovery. Student's subpoena should have been returnable on the first day of hearing. Although it appears that Student has served a new subpoena on Ms. Rocha, it is not the subject of Fruitvale's motion to quash.[3] Student has acknowledged that the first subpoena was not returnable on the first day of hearing. For this reason, Fruitvale's motion to quash the subpoena dated July 18, 2018, is granted.

IT IS SO ORDERED

DATE: August 10, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[3] For reasons not addressed in Student's opposition to the motion to quash or in the accompanying declaration of his attorney, Student has the subpoena duces tecum dated August 8, 2018, returnable to the OAH offices in Van Nuys rather than to Fruitvale's offices, where the hearing in this matter is scheduled. In his prehearing conference statement, filed on August 10, 2018, Student requested that the first day of hearing take place at the OAH offices, but that request has not yet been addressed, and venue for the hearing presently remains at Fruitvale's offices.