BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. REDWOOD CITY SCHOOL DISTRICT AND BELMONT-REDWOOD SHORES SCHOOL DISTRICT.	OAH Case No. 2015070264 ORDER GRANTING MOTION TO QUASH

On June 15, 2015, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming Redwood City School District and Belmont Redwood Shores School District as respondents. On July 15, 2015, OAH continued the start date of the due process hearing from August 11, 2015 to October 6, 2015.

On July 22, 2015, Student filed a Motion to Quash Subpoena Duces Tecum, which Student withdrew on July 24, 2015. On July 27, 2015, re-filed his Motion to Quash Subpoena Duces Tecum. No opposition was received from respondents.

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. (IDEA)). 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).) 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 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).)

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA) to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b); 34 C.F.R. § 99.3.) Pupil or education records do not include "records of instructional, supervisory, and administrative personnel…which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

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. Code of Civil Procedure section 1987.1 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.

Here, Student seeks an order quashing the subpoena issued by Redwood City on July 14, 2015, directing Brooklyn Heights Montessori School to produce on July 28, 2015, any and all records and documents pertaining to Student. Student argues that the subpoena was not properly served, impermissibly seeks to obtain prehearing discovery, fails to establish reasonable necessity for the requested records, and seeks documents which are not relevant or are already in the possession of Redwood City. Student claims he received a copy of the subpoena on July 21, 2015 only after notifying Redwood City that the only documents served on July 14, 2015 were the Notice to Consumer and Proof of Service relating to the subpoena. Student also argues that although Redwood City agreed to extend the production due date to August 4, 2015, the subpoena is nevertheless defective as an attempt at prehearing discovery because the hearing in this matter is not scheduled to begin until October 6, 2015.

Redwood City's subpoena duces tecum provides for Brooklyn Heights' compliance by sending the requested documents to the offices of Redwood City's attorney on July 28, 2015, well before the scheduled hearing date. Student correctly argues that special education law does not contain any provision authorizing prehearing discovery. A party does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulation securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself. (20 U.S.C. § 1415(h); Ed. Code § 56505, subd. (e).)

Although a student's education records can be requested by a student from a district at any time pursuant to Education Code section 56504, there is no authority which permits a district to compel prehearing production of education or other records held by a third party as attempted here by Redwood City. Because Redwood City is not entitled to use a subpoena to

obtain conduct prehearing discovery, its subpoena duces tecum seeking production of such records is improper. Student's motion to quash is granted.

IT IS SO ORDERED.

DATE: July 30, 2015

/S/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings