BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: TUOLUMNE COUNTY SUPERINTENDENT OF SCHOOLS AND CURTIS CREEK SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019020281
PARENT ON BEHALF OF STUDENT, v. TUOLUMNE COUNTY SUPERINTENDENT OF SCHOOL AND CURTIS CREEK SCHOOL DISTRICT.	OAH Case No. 2019010105 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

On February 20, 2019, Student's counsel issued a subpoena duces tecum to Roger Stock in care of Rocklin Unified School District's counsel directing him to appear at hearing on March 5, 2019, and to produce numerous records from 2014 through the present relating to institutional child abuse complaints, communications, and investigations concerning Devereaux in relation to Rocklin students placed at that facility. On February 22, 2019, the Office of Administrative Hearings granted a motion to amend which reset the due process hearing to March 19, 2019. On February 27, 2019, Tuolumne County Superintendent of School and Curtis Creek School District filed a motion to continue the due process hearing.

On March 4, 2019, Rocklin Unified School District filed a motion to quash Student's subpoena duces tecum on the grounds that it did not establish reasonable necessity for the records sought; was overbroad; sought protected information of other students; and was not accompanied by a Notice to Consumer with regards to the records sought in relation to an identified student.

On March 5, 2019, Student filed an opposition urging OAH to "take no action" or deny the motion to quash as Student had informed respondents on February 25, 2019, that Student planned to reissue the subpoena duces tecum once OAH ruled on the request for continuance and the parties were informed of any further change to the hearing schedule.

APPLICABLE LAW

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, 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).) The law accords 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).)

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

Student's argument that Rocklin's motion to quash is moot is not persuasive as Student did not establish that he withdrew his February 20, 2019 subpoena duces tecum directing a Rocklin witness to appear and produce records on March 5, 2019. As the due process hearing in this matter is now scheduled to begin on March 19, 2019, Student's subpoena impermissibly requires the production of records prior to hearing, and is quashed on that basis. In light of this Order, there is no need to address whether there are additional grounds to quash as argued by Rocklin.

ORDER

Rocklin's motion to quash is granted.

IT IS SO ORDERED.

DATE: March 11, 2019

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings