BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VACAVILLE UNIFIED SCHOOL DISTRICT AND SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016031019 ORDER GRANTING STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM

Student filed a request for due process hearing (complaint) on March 17, 2016, naming Vacaville Unified School District and Sacramento City Unified School District as respondents. On August 11, 2016, Student's motion to amend the complaint was granted (amended complaint), and the amended complaint was deemed filed on the same date.

On August 19, 2016, Vacaville issued a subpoena duces tecum requesting Parent provide a copy of any court order(s) Parent "has received between January 2015 and the present that place or placed Student in group home and/or residential care."

On September 23, 2016, Student filed a motion to quash the SDT. Vacaville filed an opposition to the motion on September 27, 2016. On September 28, 2016, Student filed a reply to Vacaville's opposition.

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).)

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 (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. In ruling on such motions, the Office of Administrative Hearings relies by analogy on the relevant portions of the California Code of Civil Procedure. Section 1987.1 of that code 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 contends the SDT should be quashed because Vacaville is seeking Student's juvenile records without adhering to California Welfare and Institutions Code section 827 (Section 827) procedures that require approval from the juvenile court to inspect juvenile case files.[1] Vacaville argues the requested records are not subject to Section 827.[2] Vacaville further argues that even if the requested records are subject to Section 827, Vacaville and its representatives are among the individuals and entities who may inspect Student's juvenile case file under Section 827. Vacaville also argues that allowing the District to view the requested records comports with the legislative intent of Section 827; Vacaville has a reasonable need to see the requested juvenile court orders; and Student's right to privacy would not be infringed because Student could seek a protective order.

Section 827 details who may inspect a juvenile case file and the procedures to do so. California Rules of Court, rule 5.552 (Rule 5.552) provides further clarity relating to issues arising under Section 827. A "juvenile case file" is defined as including, among other things, all documents filed in a juvenile court case and documents made available to probation officers, social workers of child welfare services programs, and CASA volunteers in preparation of reports to the court. (Cal. Rules of Court, rule 5.552(a)(1), (3).) A juvenile case file also includes documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers; and transcripts, records, or reports relating to matters prepared or released by the court. (Cal. Rules of Court, rule 5.552(a)(4), (5).) Juvenile court orders undoubtedly fit in several of these categories, and will be considered part of Student's juvenile case file for purposes of ruling on Student's motion.

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[1] The complaint alleges Student is 14 years old. Vacaville does not dispute that it is seeking Student's juvenile court orders pursuant to the SDT at issue.

[2] It is not clear from Vacaville's opposition the reason Vacaville contends the requested records are not part of Student's juvenile case file. It appears Vacaville's argument on this point may have been advertently deleted from its opposition.

Section 827 sets forth the individuals that may inspect a juvenile case file. (Welf. & Inst. Code, § 827, subd. (a)(1)(A–P).) Rule 5.552 identifies the individuals and entities who may inspect, receive, and copy a juvenile case file without an order of the juvenile court. (Cal. Rules of Court, rule 5.552 (b).) While Section 827 permits the superintendent or designee of the school district where the minor is enrolled or attending school to inspect the Student's juvenile case file, Rule 5.552(b)(2)(A) requires the superintendent or designee of the school district to obtain a court order to do so. Vacaville acknowledges in its opposition that it is not the school district currently responsible for Student's education. This fact is consistent with the amended complaint, which alleges Student resides in a group home located within the educational boundaries of Sacramento. Therefore, even if Student was enrolled or attending a Vacaville school, Vacaville would still be required to seek a court order to inspect Student's juvenile case file under Rule 5.552.

Section 827 and Rule 5.552 permit members of children's multidisciplinary teams and persons or agencies providing treatment or supervision of the minor to inspect the juvenile case file without a court order. However, Vacaville does not provide any facts to show that Vacaville or its representatives are members of the Student's multidisciplinary teams or are providing treatment or supervision of Student at this time.[3] Accordingly, authorization for Vacaville to inspect, obtain, or copy Student's juvenile case file may be ordered only by the juvenile court presiding judge or a judicial officer of the juvenile court. (Cal. Rules of Court, rule 5.552(b)(3).)

Vacaville's argument that the legislature's intent to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools, is not persuasive in the context of this case. Vacaville fails to cite the complete legislative intent contained in Section 827(b)(1), which states in relevant part:

> [I]t is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, . . . law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

The Legislature has reaffirmed its belief that juvenile court records should be confidential. (Welf. & Inst. Code, § 827, subd. (b)(1).) Vacaville cannot circumvent the clear procedures set forth by the Legislature that are intended to ensure the confidentiality of juvenile case files and to protect the privacy rights of minors. If Vacaville believes the requested juvenile court orders are relevant and necessary to defend itself at hearing,

[3] Even if Vacaville established itself as a member of Student's multidisciplinary team and/or a provider of treatment or supervision of Student, Vacaville would still be required to obtain a court order to inspect Student's juvenile case file. (See Cal. Rules of Court, rule 5.552(b)(3).)

Vacaville can petition the juvenile court for authorization to inspect and/or copy Student's juvenile case file under the procedures provided in Section 827 and Rule 5.552.

ORDER

Student's motion to quash the subpoena duces tecum issued by Vacaville on August 19, 2016, is granted.

DATE: October 3, 2016

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings