BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. ORINDA UNION SCHOOL DISTRICT.	OAH Case No. 2018070628 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

On August 16, 2018, Orinda Union School District filed a motion to quash a subpoena duces tecum served on Orinda by Student on August 13, 2018.

On August 17, 2018, OAH granted Student's request to amend his complaint. OAH issued a new scheduling order, resetting the due process hearing to October 11, 2018.

On August 18, 2018, Parents on behalf of Student filed an opposition to the motion to quash.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act has the right to present evidence and compel the attendance of witnesses at the hearing (20 U.S.C §1415(h)(2); Ed. Code, § 56506, subd. (e)(3).) There is, however, no right to pre-hearing discovery under the IDEA or the Education Code.

While subpoena duces tecums are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Parents have the right to request and receive the pupil's educational records. (Ed. Code, § 56504.) Additionally, a party to a due process proceeding is entitled to be served, five business days before the hearing, with copies of all the documents the other party or parties intend to use at the hearing, and a list of all witnesses intended to be called with a statement of the general areas of their expected testimony. (Ed. Code, § 56505, subd. (e)(7).) These required disclosures are the only mechanisms by which a party may obtain documentary information from another party prior to hearing.

Special education law does not specifically address motions to quash subpoenas. In ruling on such motions, the Office of Administrative Hearings relies by analogy on the relevant portions of California Code of Civil Procedure, section 1987.1, which provides that parties or consumers, among others, may make a motion to quash a subpoena duces tecum, and the 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

Orinda contends Student's subpoena duces tecum is untimely, incomplete, constitutes improper pre-hearing discovery, and fails to make a showing of reasonable necessity for the records requested. Orinda attached a copy of the subpoena duces tecum to its motion to quash. The subpoena was served on Orinda's Director of Student Services and Personnel, Jennifer Woodman. Section 2 of the subpoena is incomplete as it fails to provide a date, time, and location to which Ms. Woodman was to appear and/or produce the records described in the accompanying affidavit.

Student attached to his opposition the same copy of the subpoena duces tecum, along with a letter to Orinda dated July 30, 2018, from Student's attorney. The July 30, 2018 letter described the records that Student seeks and requests Orinda provide the records to Student's counsel within five business days of the letter. Student argues that the subpoena's accompanying affidavit, along with his attorney's July 30, 2018 letter, provided Orinda with sufficient information as to the time and manner to which Ms. Woodman was to produce the records.

However, Student's subpoena seeks production of records prior to the hearing. Accordingly, production of documents for a date prior to hearing would constitute improper pre-hearing discovery. A party to a due process hearing in California does not have the power to use a subpoena to compel the production of documents before hearing. Therefore, Orinda's motion to quash is granted.[1]

ORDER

1. Orinda's motion to quash is granted.

DATE: August 22, 2018

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings

[1] This order does not address any of the other grounds in Orinda's motion to quash.