BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060459 ORDER DENYING STUDENT'S MOTION TO QUASH DISTRICT'S SUBPOENA DUCES TECUM

On June 9, 2017, Student filed a Request for Due Process Hearing naming Berkeley Unified School District. On September 8, 2017, Student filed a Motion to Quash a subpoena from District seeking the production of records at hearing by San Leandro Juvenile Justice Center. A copy of the subpoena at issue was not filed with OAH. On September 8, 2017, District filed and Opposition to Student's Motion to Quash. On September 11, 2017, Student filed a Reply to District's Opposition.

APPLICABLE LAW

Special education law does not specifically address whether a subpoena may be issued by an attorney, or whether or how a subpoena duces tecum may be quashed; however, relevant provisions of the California Code of Civil Procedure provide guidance. Code of Civil Procedure, section 1985, subdivision (c) provides that an attorney of record in an action may sign and issue a subpoena to require production of the matters or things described in the subpoena. California 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, the subpoena duces tecum subject to the motion to quash has not been filed with OAH. In the absence of the document at issue, OAH cannot rule on the merits of Student's Motion. On this basis Student's Motion to Quash District's subpoena seeking the production of records at hearing by San Leandro Juvenile Justice Center is denied without prejudice.

DATE: September 18, 2017

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings