BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2013100405
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2013101109 ORDER GRANTING MOTIONS TO QUASH SUBPOENAS DUCES TECUM TO PARENTS

These consolidated matters are set for a due process hearing beginning on February 25, 2014.

On February 7, 2014, Student filed two motions to quash Sacramento City Unified School District's (District's) two subpoena duces tecums (SDT's) dated January 24, 2014, for records individually from Mother and Father (Parents). On February 12, 2014, District filed an opposition. On that date, Student withdrew her motions on the basis of District's withdrawal of the SDT's. However, on February 10, 2014, District issued new SDT's to Parents. Effective February 14, 2014, Student filed two new motions to quash the SDT's.

On February 14, 2014, the undersigned Administrative Law Judge (ALJ) conducted a telephonic prehearing conference, during which the ALJ granted District's request to file written opposition. On February 18, 2014, District filed its opposition. The SDT's seek to compel the production of records pertaining to Student, and District served Student's attorney with consumer notice. Production is required at hearing on February 25, 2014.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities Education Improvement Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).)

California Code of Regulations, title 5, section 3082, subdivision (c)(2) sets forth the right of the parties in a special education hearing to compel the attendance of witnesses. It provides in pertinent part that, "[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)." California Code of Regulations, title 5, section 3089, specifies that the subpoena provisions of the Administrative Procedure Act (APA), found in California Government Code sections 11450.05 to 11450.30, do not apply in special education due process hearing matters. Special education law does not specifically address whether an SDT may be issued by an attorney, or whether or how an SDT may be quashed.

Since special education law is silent on these topics, and the APA does not directly apply, OAH looks to the relevant portions of the APA and the California Code of Civil Procedure as guidance. Code of Civil Procedure, section 1985, subdivision (c) provides that an attorney of record in an action may sign and issue a SDT to require production of the matters or things described in the subpoena. Code of Civil Procedure, section 1985.3 provides that anyone who seeks to obtain personal records pertaining to a consumer in connection with a civil action or proceeding must take certain steps to notify the consumer that his or her personal records are being sought, including personal information held by a local governmental agency. (Code Civil Proc., § 1985.4.) A party subpoenaing confidential third party records in an administrative proceeding must comply with the notice protections of section 1985.3. (*Sehlmeyer v. Dept. of General Services* (1993) 17 Cal.App.4th 1072.) In ruling on a motion to quash a subpoena or SDT, OAH also relies by analogy on the relevant portions of 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.

DISCUSSION

Student's motions to quash are based on three grounds: she claims District's SDT's to Mother and Father are vague, overly broad, and seek documents not relevant to the issues; the SDT's constitute prehearing discovery; and they do not contain a showing of reasonable necessity. District's SDT's seek "any and all" records pertaining to Student's placement and attendance at Falcon Ridge Ranch, a residential treatment facility in Utah, accompanied by a list of specified categories "including but not limited to" each parent's records of her application to the facility, her special education records and grades there, assessments, reports, and correspondence, including emails between employees at Falcon Ridge Ranch, Parents, and Student's attorneys.

District asserts that good cause exits for the production of these documents, the SDT's contain a showing of reasonable necessity for the documents, and they do not seek prehearing discovery. Since District's SDT's do not seek production of any documents prior to hearing, that basis to quash the SDT's is incorrect.[1]

[1] While District's first SDT's to Parents requested production prior to hearing, the new SDT's did not have that particular option box checked.

Student's claim that the documents sought by the District's SDT's to Parents are generic, vague, and overly broad is, for the most part, not persuasive. Student's complaint avers that Parents admitted her to Falcon Ridge Ranch on October 4, 2013, and she requests both reimbursement for, and prospective placement at that facility. District's SDT's are expressly limited to records pertaining to Student's "placement and attendance" there. However, as to communications between Falcon Ridge Ranch, Parents, and Student's attorneys, the SDT's appear to constitute a fishing expedition into the arena of confidential attorney-client privilege and attorney work product. Accordingly, that portion of each SDT is overly reaching.

The standard for issuance of a subpoena in this proceeding is "reasonable necessity," which is a stricter standard than the "good cause" requirement provided under the APA. This standard requires a specific showing that the requested documents are reasonably necessary for the requesting party to present a case at hearing. The declaration in support of an SDT must set forth sufficient detail, specific to the legal or factual issues to be adjudicated, to show that the required documents are objectively required for the party present a case or defense.

Student's claim that District's SDT's do not establish reasonable necessity for Parents' production of the records listed is persuasive. Here, the attorney for the District asserts in his declaration accompanying the SDT's that the documents are "likely relevant" to District's litigation. In addition, District asserts that it needs "all" of Student's records to defend her case. These assertions do not establish a reasonable necessity for the records sought. Additional arguments made by District but which were not set forth in the body of the SDT's' declarations are not considered in evaluating the SDT's.

Student, as the petitioning party in her case, has the burden of persuasion as to her issues at hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387. She will be required to produce evidence establishing the appropriateness of her residential placement to substantiate her reimbursement claim. (See 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c) (2006); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369.) District has the right to receive a copy of all documents Student intends to present at hearing at least five business days prior to the due process hearing. (Ed. Code, § 56505, subd. (e)(7).) Until and unless Student fails to timely produce educational records relating to the residential placement in dispute, no reasonable necessity for seeking the documents from Parents can be shown. The same applies to Student's claim that District should fund her continued placement at the facility as an appropriate special education program. District's assertion that the reasonable necessity standard is met by showing a relevant "nexus" between the documents sought and the issues in the case is incorrect. If the production of records could be compelled on a boilerplate recital that they were material and likely relevant, the reasonable necessity standard would be rendered meaningless.

ORDER

District's SDT's dated February 10, 2014, and issued to Mother and Father in connection with these consolidated matters are hereby quashed.

DATE: February 21, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings