BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PLEASANTON UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018071095 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM FOR RECORDS FROM KATHY FUTTERMAN

On September 27, 2018, Student filed a motion to quash a subpoena duces tecum for records from Kathy Futterman issued by Pleasanton Unified School District's attorney on September 25, 2018.[1] On October 1, 2018, Pleasanton filed an opposition to the motion to quash. On October 2, 2018, Student's attorney filed a declaration in support of the motion to quash.[2]

APPLICABLE LAW

Subpoenas in Special Education Due Process Hearings

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)."

[1] On September 27, 2018, Student filed motions to quash five separate subpoenas duces tecums issued to five separate entities by Pleasanton's attorney. Student's attorney has also filed at least one separate declaration to support the motion to quash for each entity. Pleasanton filed an opposition to each motion to quash on October 1, 2018. A separate order granting or denying each motion to quash will be issued as to each entity.

[2] OAH has already issued three orders granting in part and denying in part motions filed by Student on September 27, 2018, asking that three other subpoenas duces tecum be quashed. In those orders it states that Student's attorney filed her supporting declaration for each motion on the same date the motion was filed. This was not accurate, but amended orders will not be issued to reflect the correct date the attorney's supporting declaration was filed because this information does not substantively affect those orders.

Thus, subpoenas are available to require the production of information that is reasonably necessary in order for a party to present their case at hearing. In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in the Code of Civil Procedure. Section 1985 of that Code governs the issuance of subpoenas. In accordance with that provision, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced at hearing. Parties must also comply with the consumer protections of Code of Civil Procedure section 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services*, (1993) 17 Cal.App.4th 1072.)

Motions to Quash in Special Education Proceedings

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

In his complaint Student identifies Ms. Futterman as an educational therapist. In the motion to quash the subpoena duces tecum for records from Ms. Futterman, Student makes two arguments. One is that Ms. Futterman, has not provided services to Student since 2017, and any issues related to her services were resolved after Student filed a complaint that was subsequently dismissed by Student in OAH Case No. 2017120391. This is also asserted by Student's attorney in her sworn declaration. The second argument is that Pleasanton is not entitled to have documents produced prior to hearing, although the subpoena duces tecum states that Ms. Futterman can tender the documents at Pleasanton's attorney's office on October 10, 2018, in lieu of producing them on the first day of hearing.

In his complaint, Student asks, as a proposed resolution, that Pleasanton be ordered to pay for Barton tutoring, but it does not ask for any other type of tutoring.[3] In its opposition to the motion to quash, Pleasanton acknowledges that Ms. Futterman is not trained as a Barton tutor. Because Ms. Futterman has not worked with Student since 2017, and is not a Barton tutor, Pleasanton has not established that the requested documents are reasonably necessary for it to present its case. Further, there is no provision in special education was that allows a party to obtain documents pursuant to a subpoena duces tecum prior to hearing. Accordingly, Student's motion to quash the subpoena duces tecum for records from Kathy Futterman is granted.

[3] The Barton System is a program that is believed to aid people who are dyslexic.

ORDER

Student's motion to quash the subpoena duces tecum for records from Kathy Futterman is granted.

IT IS SO ORDERED.

DATE: October 10, 2018

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings