BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. ESCONDIDO UNION ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018041322 ORDER GRANTING STUDENT'S MOTION TO QUASH SUBPOENAS

Student filed a Request for Due Process Hearing on April 30, 2018, naming Escondido Union Elementary School District. The due process hearing was scheduled to begin on June 26, 2018, but on June 11, 2018, District filed a motion to continue the hearing. On June 18, 2018, OAH continued the hearing, for good cause, to August 14, 2018.

On June 7, 2018, District served notice on Student's counsel that District was serving two subpoenas duces tecum on the custodians of records of World Class Learning Academy and Alternative Teaching Strategy Center. The subpoenas seek "any and all" documents regarding among other things, Student's enrollment, attendance, and progress at World Class Learning Academy and Alternative Teaching Strategy Center. The subpoenas direct the custodians of records to appear in person and to produce the records described in the accompanying affidavit at District's offices in Escondido, California on the previous hearing date, June 26, 2018, at 9:30 a.m.

On June 14, 2018, Student filed a motion to quash District's subpoenas. Student argues that District's subpoenas are overbroad and amount to pre-hearing discovery. Student also asserts that he offered to make the requested documents available to District voluntarily, rendering the subpoenas unnecessary.

On June 18, 2018, District filed an opposition to the motion to quash, contending that its subpoenas do not seek pre-hearing discovery as the request directs production of the documents on the first day of hearing. District further argues that the subpoenas are not overbroad and seek relevant information related to Student's request for reimbursement for services provided by World Class Learning Academy and Alternative Learning Strategies.

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

District's subpoenas are returnable on June 26, 2018, which is no longer the first day of hearing. Accordingly, production of documents for that date 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, Student's motion to quash is granted.[1]

ORDER

1. Student's motion to quash is granted.

2. This order is made without prejudice to District to issue renewed subpoenas duces tecum which state the hearing date as the date for production.

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

DATE: June 19, 2018

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