BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017120339
v.	ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM
RIVER SPRINGS CHARTER SCHOOL.	

On March 1, 2018, Student filed a Motion to Quash subpoenas duces tecum served by River Springs Charter School on third parties to this action. Charter responded with an opposition filed on March 6, 2018.

Student raises several grounds on which he argues that the subpoenas should be quashed. He asserts that the subpoenas are procedurally defective because they misidentify the matter to which they relate, they require production before the start of hearing, they lack reasonable necessity for the requests, and they are overbroad. District opposes the motion on substantive grounds and further argues that the motion is untimely, having been made after the motion-cut-off date of February 28, 2018.

FACTS

On November 21, 2017, Student filed a due process hearing request against Temecula Valley Unified School District, Riverside County Office of Education, and Springs Charter School. That precursor matter was assigned OAH case number 2017110897. Student moved to dismiss Springs Charter School and Riverside County Office of Education from that matter on December 20, 2017, and that motion was granted on December 21, 2017.

This matter was filed on December 7, 2017, against Charter and Riverside County Office of Education. A Scheduling Order was issued by the Office of Administrative Hearing on December 12, 2017, which stated that the last day to file any motions without specific statutory deadlines was January 17, 2018; three business days before the prehearing conference. The Mediation and Due Process Information Packet included with the Scheduling Order explained that all prehearing motions must be received not later than the date the prehearing conference statements are due. The order directed that any motion filed after that date must show good cause why it was not timely filed. By order dated January 22, 2018, OAH continued the due process hearing to a starting date of March 14, 2018, and setting a date of March 5, 2018 for a new prehearing conference. PHC statements and any pretrial motions were therefore due by close of business on February 28, 2018.

On February 16, 2018, Charter gave Student formal notice that it had served subpoenas duces tecum on various entities. The subpoenas were returnable on March 14, 2018, which was at that time the scheduled date for the start of hearing in this matter.

Instead of the correct case number, the subpoenas bore the case number for the precursor action filed against Temecula Valley. However, the subpoenas did not list Temecula Valley in the matter caption, reporting the matter as Student v. "River Springs Charter School." (Riverside County Office of Education was not dismissed from this action until March 5, 2018.) Within the declarations for each of the subpoenas, the case number was again given incorrectly, but the matter's caption was correctly given as Parents on Behalf of Student versus "River Springs Charter School and Riverside County Department of Education." One subpoena was directed to Temecula Valley Unified School District as a third party and that subpoenas references Temecula as Student's current school district of residence; otherwise Temecula Valley was not named anywhere else in the subpoenas.

Student contacted Charter on February 27, 2018, asking that Charter withdraw its subpoenas. Charter responded on February 28, 2018, at 2:40 p.m., declining to so do. At 6:35 p.m. on February 28, 2018, Student filed his motion to quash. In the motion, Student dropped a footnote stating that the motion to quash was timely "because Student didn't receive a response until 2:40 p.m. today, and filed this motion as soon as possible thereafter."

At the renewed PHC on March 5, 2018, the ALJ accepted a joint stipulation filed by the parties on February 28, 2018, proposing that the start of hearing be delayed one day. The PHC order rescheduled the start of hearing from March 14 to March 15, 2018, and directed the parties to notify all potential witnesses of the new hearing date.

ANALYSIS

Student's motion to quash is made on substantive and procedural grounds, and Charter opposes the motion on substantive and procedural grounds. As a threshold issue, Charter argues that the motion is untimely. Pursuant to the scheduling order and the subsequent continuance, Student had to make any pretrial motion on February 28, 2018, or make a showing of good cause why it was not filed timely.

Student filed the motion after the 5:00 p.m., close of business on February 28, 2018. OAH received the motion as filed on March 1, 2018. Student was aware of the deadline, referencing it in his motion to quash, and arguing that the motion was timely because it was filed "as soon as possible" after hearing that Charter would not withdraw its subpoenas.

Charter contends that Student has not shown good cause for the failure to timely file. It observes that notice of the subpoenas was served upon Student on February 16, 2018, but Student did not take action until February 27, 2018. Charter notes that it had no direction or obligation to reply by any certain date, but that it did respond to Student at 2:40 p.m. on February 28, 2018. Student did not file his motion until almost four hours later, after the close of business.

Student has not shown good cause for the failure to make his Motion to Quash in a timely manner. The standard is not that any motion be filed "as soon as possible" following a response to a request. A late motion must be accompanied by a showing of good cause for the failure to comply with the deadline. Student has not shown any cause at all. Instead, at most he has made an argument that he made a good faith effort to comply. That does not suffice to excuse an untimely filing. The motion to quash is denied as untimely made.

Student raises two arguments that suggest that the subpoenas are facially invalid. First, he notes that the subpoenas bear the wrong case number. Charter acknowledges that the case number from the Temecula Valley matter appears on the subpoenas because of a drafting error.

It is clear from the face of the subpoenas and the parties' subsequent conduct that the error in reporting the case number was immaterial. The subpoenas correctly report the parties to the action in the caption and in the text of the subpoena request. Charter and the Riverside County Department of Education had been dismissed from the Temecula Valley matter on December 21, 2018, nearly two months before the subpoenas were issued.

Student does not assert that he was confused by the use of the wrong case number or that his response was in any way delayed because of the misnumbering, and any such assertion would not be credible in light of the parties' subsequent actions. In counsel's declaration in support of the Motion to Quash, no allegation is made that there was any confusion or delay in reacting caused by the use of the incorrect case number. The error was effectless. The subpoenas were not rendered invalid by the use of the incorrect case number.

Student also asserts that the subpoenas are facially invalid because they called for prehearing discovery, noting that they are returnable on March 14, 2018, when the hearing is currently scheduled to start on March 15, 2018. Student is correct that prehearing discovery is not available in special education matters brought before OAH, but pushes the boundaries of reasonable argument in asserting that the subpoenas duces tecum at issue here are therefore invalid.

At the time the subpoenas were issued, hearing was set to begin on March 14, 2018. The parties made a joint request for a one-day continuance of the start of hearing twelve days later. The request was approved on March 5, 2018. As noted in the PHC order, the parties were directed to inform all potential witnesses, which would include parties receiving subpoenas duces tecum, of the new hearing dates. Valid subpoenas duces tecum are not converted into impermissible prehearing discovery by subsequent continuances of the hearing date, provided that the requesting party informs the party to produce the requested documents of the new date.

ORDER

1. The motion to quash the subpoenas duces tecum is **denied**.

2. Charter is to inform the parties from whom it seeks documents of the new production date.

DATE: March 8, 2018

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings