BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HERMOSA BEACH CITY SCHOOL DISTRICT.	OAH Case No. 2017060038 ORDER DENYING DISTRICT'S MOTION TO QUASH SUBPOENAS DUCES TECUM

Prior to hearing Student served subpoenas duces tecum (SDTs) dated November 21, 2017, on each of two District employees, Denise Vellutini-Stern, a school psychologist, and Christina Soria, an occupational therapist, commanding them to appear to testify at the due process hearing in this matter and produce documents described on the SDTs. District filed a motion to quash the SDTs, claiming they were improperly served, and the documents demanded therein were not relevant to the issues for hearing, and that such descriptions were overbroad and vague. Student filed a written opposition to such motion, arguing that District's counsel had agreed to accept service on behalf of District and its employees, that the documents requested were relevant to the matter and the description of such documents on the SDT were sufficiently specific. Student also contended that District had improperly failed to meet and confer with Student's attorney before bringing its motion to quash.

On December 5, 2017, the first day of hearing in this matter, the undersigned Administrative Law Judge (ALJ) heard oral argument from counsel on District's Motion to Quash Subpoenas.

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

The standard for issuance of a subpoena in this proceeding is "reasonable necessity." District's claim that Student's SDTs failed to establish reasonable necessity for the witnesses' production of the records identified on the SDTs is not persuasive. The demanded documents are relevant to the issues for hearing and sufficiently described on the SDTs. Moreover, District's counsel was properly served with the SDTs and Notices to Consumer pursuant to her representation to Student's counsel that District's counsel would accept service on behalf of District and its employees in this matter.

ORDER

District's Motion to Quash the SDTs dated November 21, 2017, and issued to each of Ms. Stern and Ms. Soria in connection with this matter is hereby denied.

DATE: January 18, 2018

DocuSigned by:
Christine Arden
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CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings