BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017051320
v.	ORDER GRANTING IN PART STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM RDER GENERIC
IRVINE UNIFIED SCHOOL DISTRICT.	

On September 29, 2017, District issued a subpoena duces tecum (SDT) for production of documents by Dr. Christine Davidson. The SDT requests "those records and documents in Dr. Davidson's possession, or in the possession of any of her employees or colleagues at the Davidson Learning Center, pertaining to Student from the 2016-2017 school year to the present, which were prepared, referenced , reviewed or considered in developing any opinion and/or recommendations presented regarding Student. Such records shall include but are not limited to, assessment data, protocols, notes, observation records, reports, charts and any and all documents, including emails and other electronic documents related to communications with Student, educational services provided to Student, his parents, and attorneys, and any other documents related to Student's ability to access his curriculum and to function in an educational environment."

On October 4, 2017, Student filed a Motion to Quash District's SDT on the grounds that the documents sought are not reasonably necessary to this matter, specifically (1) the SDT is overbroad in scope, seeking records not related to this educational dispute; (2) the SDT seeks documents which may involve privileged and/or confidential information, including documents which may involve other of Student's family members, which are protected and not subject to production; and (3) the SDT seeks Student's educational records which are already in District's possession.

On October 6, 2017, District filed an Opposition to Student's Motion to Quash STD, contending the information sought is not overbroad nor duplicative, but seeks documents relevant and necessary for District to appropriately cross-examine Student's witnesses and for District's defenses.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities 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, § 56505, subd. (e)(2)(3).) The hearing officer in a special

education due process hearing may issue subpoenas or SDT's upon a showing of reasonable necessity by a party. (5 Cal. Code Regs. § 3082(c)(2). Through analogy to the California Code of Civil Procedure, the attorney of record in an action may also sign and issue a SDT to require production of the matter or things described in the subpoena. (Code Civ. Proc. § 1985, subd. (c).)

Special education law does not specifically address motions to quash subpoenas or SDTs. In ruling on motions, OAH relies by analogy on relevant portions of the Code of Civil Procedure, Section 1987.1, which provides that, the court:

> "…may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms and conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person."

"Reasonable necessity" requires a specific showing that the requested documents are reasonably necessary for the requesting party to present a case at hearing.

DISCUSSION

Student has identified Dr. Christine Davidson as an expert witness for hearing. Dr. Davidson has assessed Student as an independent education evaluator, provided Student and District with an independent psychoeducational assessment, and presented her findings and recommendations at an IEP team meeting, all of which is relevant to the issues of this due process hearing. Dr. Davidson also observed Student at New Vista School in 2017. As such, District has shown a reasonable necessity for documents and information in Dr. Davidson's possession which contributed to the development of her expert opinion, observations, and written reports.

Based upon the written reports Dr. Davidson submitted to the IEP team, as well as subsequent observation of Student, Dr. Davidson has potentially based a portion of her expert opinion and recommendations upon those observations, meetings, and work with Student, which have taken place outside of District's school environment. District has a right to all materials supporting Dr. Davidson's assessments tools, observations, and information which she utilized or considered in determining her opinions or relied upon in her reports and recommendations. Additionally, it appears from counsel's arguments, Dr. Davidson also provided educational services to Student during the time period at issue. Documents, including but not limited to, notes, progress reports, and tests, are relevant, and may provide information regarding Student's learning abilities, not otherwise available from other sources, and may also support or allay any suspicion of bias created by being both the independent expert as well as Student's outside service provider.

Student, however, has raised appropriate concerns regarding duplication of documents and confidentiality. District has not shown a reasonable necessity for copies of educational records which were initially generated by District itself. Duplication of documents, initially provided from District will not provide any additional information which cannot be ascertained through testimony.

Nor is Dr. Davidson required to produce documents which are not specifically related to Student. Documents which primarily pertain to Student's family members, attorneys or home are not relevant to District's defense of educational claims. Mere mention of a family member or attorney in a document, however, does not exclude the document from production, if it is relevant to Dr. Davidson's opinions and recommendations. Third party names may be redacted prior to production.

Lastly, the concern of production of documents from a treating service provider may present issues of confidentiality. It is unknown at this point what documents or notes exist. Dr. Davidson shall bring these documents to the hearing for her testimony, and production for District, shall be made on a document by document basis, in camera, if necessary.

ORDER

1. Dr. Davidson shall produce those records and documents for Student, generated during the 2016-2017 school year to the present date, which were prepared, referenced, reviewed, or considered in developing any opinions and/or recommendations presented to District regarding Student. Such records shall include but are not limited to, assessment data, protocols, notes, observation records, reports, charts, any and all documents, including emails and other electronic documents, related to communications with Student, his parents, and attorneys and any other documents related to Student's ability to access his curriculum and to function in the educational environment.

2. Dr. Davidson is not required to produce any documents initially prepared by District or maintained as part of Student's educational file.

3. Dr. Davidson is not required to produce any documents which primarily refer to Student's family members or attorneys. Any document relied upon by Dr. Davidson in developing her opinions and recommendations, which reference third parties, may redact the name of the third party.

4. Dr. Davidson shall bring in a sealed envelope those documents she deems as confidential to the hearing for her testimony, at which time the ALJ shall determine, in camera, if the documents are relevant and a reasonable necessity for production.

IT IS SO ORDERED.

DATE: October 16, 2017

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings