BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2013100405
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2013101109 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM ISSUED TO DISTRICT

These consolidated matters are set for a due process hearing beginning on February 25, 2014. On February 12, 2014, Sacramento City Unified School District (District) filed a motion to quash a subpoena duces tecum (SDT) for records issued by Student and dated February 4, 2014. The SDT seeks to compel the production of specified records pertaining to Student. Production is required at hearing on February 25, 2014, and prior to the hearing on February 17, 2014.

On February 14, 2014, the undersigned Administrative Law Judge (ALJ) conducted a telephonic prehearing conference, during which Student's SDT and District's motion to quash were discussed. The ALJ granted Student's request to file a written opposition but has not received any to date. During the conference, Student indicated she has received District's assessment protocols, and withdrew that portion of her SDT. Her remaining request is for email messages between District staff regarding Student which "directly relate" to her, and are "maintained by an education agency."

District's motion to quash includes a declaration under penalty of perjury by the attorney for the District, Daniel Osher, which he amended during the conference to be based on information and belief, asserting that District does not have any email messages pertaining to Student that constitute educational records.

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.

A party does not have the right to use a subpoena or SDT to compel the production of documents prior to a special education due process hearing. In general, there is no right to prehearing discovery in these proceedings. The applicable statutes and regulations securing the rights to present evidence and compel the attendance of witnesses generally relate to the hearing itself. Federal law provides for the rights to present evidence and compel the attendance of witnesses in "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) Similarly, California law extends the rights to present evidence and compel the attendance of witnesses to "[a] party to a hearing held pursuant to this section ..." (Ed. Code, § 56505, subd. (e).) Section 56505, subdivision (a) provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and SDTs.

DISCUSSION

District's motion to quash the remaining portion of Student's SDT is based on several grounds. First, District argues that Student's SDT calls for prehearing production. Second, District argues that Student has not shown a reasonable necessity for the records. In addition, District asserts that it does not have any email communications among staff that constitute Student's educational records.

Student's SDT, on its face, called for production of the requested documents on a date prior to hearing. The regulations governing this proceeding specifically disallow the provisions of the APA that provide broader authority for the use of subpoenas in other administrative hearings. Although the OAH subpoena form has options for production of the records under subpoena, including prehearing production, not all of them may apply to special education matters. While SDT's 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 prior to hearing. (Ed. Code § 56504).) Additionally, the parties are entitled to receive copies of all the documents they intend to use at hearing, not less than five business days prior to the hearing. (Ed. Code § 56505, subd. (e)(7).) These required disclosures are the basic mechanisms by which a party may obtain documentary information from another party prior to hearing. Therefore, Student's SDT for production prior to hearing is invalid.

The standard for issuance of a subpoena in this proceeding is "reasonable necessity," which is a stricter standard than the "good cause" requirement provided under the APA. This standard requires a specific showing that the requested documents are reasonably necessary for the requesting party to present a case at hearing. The declaration in support of an SDT must set forth sufficient detail, specific to the legal or factual issues to be adjudicated, to show that the required documents are objectively required for the party present a case or defense.

District's claim that Student's SDT does not establish reasonable necessity for Parents' production of the records listed is persuasive. Here, an attorney for Student merely asserts, in her declaration accompanying the SDT, that Student needs "all" of her records to litigate her case. This assertion does not establish a reasonable necessity for the email records sought. The declaration's assertion that Student only seeks emails that directly relate to her and are maintained by the educational agency is merely a conclusory statement of the definition of "educational records" and does not explain their necessity. (20 U.S.C. § 1232g(4)(A).)

Until and unless Student establishes that such District staff email messages exist, that they constitute her educational records, are material to her case, and not otherwise available, Student has not established any reasonable necessity for seeking the documents from District. If the production of records could be compelled on a boilerplate recital that they were material and relevant, the reasonable necessity standard would be rendered meaningless.

ORDER

Student's SDT dated February 4, 2014, and issued to District- in connection with these consolidated matters is hereby quashed.

DATE: February 24, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings