BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2015070871
v.	ORDER DENYING STUDENT'S MOTION TO PARTIALLY QUASH SUBPOENAS DUCES TECUM TO CENTRAL VALLEY AUTISM PROJECT AND MEGAN WOLFE
DAVIS JOINT UNIFIED SCHOOL DISTRICT.	

On July 6, 2015, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Davis Joint Unified School District. On August 24, 2015, OAH continued the matter for good cause to September 28, 2015.

On September 15, 2015, Student filed a Motion to Quash, seeking an order partially quashing District's subpoenas duces tecum to Central Valley Autism Project and to Megan Wolfe. District's subpoena to CVAP requests records pertaining to Student "relating to the school-based services provided to Student by Central Valley Autism Project ('CVAP') from on or around November 17, 2014 through June 30, 2015, pursuant to the Master Contract between CVAP and the District, signed by CVAP on December 3, 2014." District's subpoena to Megan Wolfe requests records pertaining to Student "relating to the school-based services provided to, supervised by, and/or recommended for Student by Ms. Wolfe on behalf of the Central Valley Autism Project ('CVAP') from November 17, 2014 to the present."

Student contends each subpoena is not supported by a showing of reasonable necessity and is overbroad. Student does not oppose the production of some records requested, but insists only a limited subset of the requested documents should be produced.

On September 17, 2015, District filed its opposition to the Motion to Quash. District argues the documents requested are reasonably necessary and material to the issues raised and remedies requested by Student, even in view of Student's withdrawal of her claims asserting the substantive, as opposed to procedural, denial of a free appropriate public education. District asserts the records requested will allow District to fairly litigate an aspect of the remedy Student has requested, which may depend upon the appropriateness of the recommendations CVAP and Ms. Wolfe made in a July 31, 2015 School Update Report.

APPLICABLE LAW AND DISCUSSION

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.. Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings, but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

In special education proceedings in California, "[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)." (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2).) While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings, which accord prehearing access to two types of documents: (i) parents have the right to request and receive the pupil's educational records within five business days at any time (Ed. Code, § 56504), and (ii) the parties are entitled to receive copies of all the documents the educational agency intends to use at hearing, not less than five business days prior to the hearing. (Ed. Code, § 56505, subd. (e)(7).)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, OAH relies by analogy on the relevant portions of Code of Civil Procedure. 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.

Here, District's subpoenas duces tecum request records maintained by CVAP and Ms. Wolfe of a category that is limited to a narrow window of time and a limited location of service. Student's objection to the subpoenas is largely related to the second sentence of the description of records requested, which only sets forth examples of what forms the requested records might take, and does not expand the time- and location-limited nature of the categories requested. District persuasively argued that the records requested are necessary for District to defend itself regarding the remedy Student has requested for the procedural denial of FAPE Student alleged. The subpoenas' requests are reasonably calculated to lead to the production of information directly related to Student's behavioral needs, which is relevant to the issue of whether, if Student successfully demonstrates that District denied Student a FAPE through the process that lead to District's offer of behavioral supports and services for the 2015-2016 school year, Student should receive her requested remedy of implementing CVAP's July 31, 2015 recommendations.

Student's Motion to Quash is therefore denied.

IT IS SO ORDERED.

DATE: September 18, 2015

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings