BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013040098
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013090197 ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM AS MOOT

On April 3, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request naming the Folsom Cordova Unified School District (District). On September 6, 2013, the District filed a Request for Due Process Hearing naming Student, along with a motion to consolidate. On September 16, 2013, Student filed a motion to amend her complaint. OAH granted the motion to amend and the motion to consolidate and the consolidated matters are now set for hearing on November 14, 2013.

On September 14, 2013, the District served Student with a copy of a subpoena duces tecum (SDT) directed to Custodian of Records, Jane Johnson Speech Service, along with a notice to consumer. On September 19, 2013, the District served the custodian of records with the SDT which calls for the production of numerous records on October 2, 2013, the previously calendared date for hearing. On September 25, 2013, Student filed a motion to quash the SDT on the grounds that the District already has most of the requested records, other requested records do not exist or are not relevant, the request violates privacy rights, records may be protected by privilege, the District failed to provide the Custodian with a sample declaration to complete or information regarding her right to seek reasonable costs, and the request is overbroad and burdensome and perhaps used to intimidate or harass Student's expert.

On September 30, 2013, the District filed an opposition asserting that the witness has been instructed in writing that she need not respond to the SDT served on September 19,

2013, as the District will be re-issuing the SDT for a return date of the first of day of hearing, now set for November 14, 2013. The District further claims that its SDT is proper.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education 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) and (3).) There is, however, no right to pre-hearing discovery under the IDEA. A parent may obtain his or her child's educational records pursuant to Education Code section 56504. Additionally, pursuant to Education Code section 56505, subdivision (e)(7), parties are entitled to receive copies of all the documents that each party intends to use at hearing, no less than five days prior to the hearing.

Those provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal Code Regs., tit. 5, § 3089.) Subdivision (c)(2) of section 3082 of title 5, of the California Code of Regulations, provides in pertinent part that 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)."

Special education law does not specifically address motions to quash subpoenas or SDT's. In ruling on such motions, the OAH relies by analogy on the relevant portions of California Code of Civil Procedure, section 1987.1, which 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 District's SDT calls for Jane Johnson Speech Service to produce records on October 2, 2013. When the District served the SDT, the Student filed case was set to begin hearing on that date. On September 20, 2013, and the dates for the consolidated matter were re-set. The District's opposition, supported by a declaration of its attorney, asserts it is not attempting to engage in prehearing discovery and that the District informed Jane Johnson Speech Service in writing on September 27, 2013, that it need not comply with the SDT served on September 19, 2013. The District intends to reissue the SDT for a return date of the first day of hearing.

While Student raises numerous grounds to quash the SDT, those grounds need not be addressed here because the District, in notifying the witness that she need not comply with the subpoena, has in effect withdrawn its request for records. Because the hearing on the consolidated matter is now set to begin November 14, 2013, the District's SDT is moot and the District will need to serve another SDT upon Jane Johnson Speech Services in an effort

to obtain the requested records. Student's objections to the District's SDT can be raised again if the District issues a new SDT upon Jane Johnson. Accordingly, Student's Motion to Quash is denied as moot.

ORDER

1. Student's Motion to Quash the Subpoena Duces Tecum on Custodian of Records, Jane Johnson Speech Service, is denied as moot, without prejudice to its renewal if the District serves a new subpoena.

2. The District is to serve a copy of this Order on Jane Johnson Speech Services by 12:00 p.m. on October 2, 2013.

IT IS SO ORDERED.

Dated: October 1, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings