BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018071095
v.	ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM FOR RECORDS FROM CYNTHIA PETERSON
PLEASANTON UNIFIED SCHOOL DISTRICT.	

On September 27, 2018, Student filed a motion to quash a subpoena duces tecum for records from Cynthia Peterson, Ph.D. issued by Pleasanton Unified School District's attorney on September 25, 2018.[1] On October 1, 2018, Pleasanton filed an opposition to the motion to quash. On October 2, 2018, Student's attorney filed a declaration in support of the motion to quash, and Dr. Peterson also filed a declaration.[2] On October 5, 2018, Pleasanton filed an amended opposition to the motion to quash.

APPLICABLE LAW

Subpoenas in Special Education Due Process Hearings

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)."

[1] On September 27, 2018, Student filed motions to quash five separate subpoenas duces tecum issued to five separate entities by Pleasanton's attorney. Student's attorney has also filed at least one separate declaration to support the motion to quash for each entity. Pleasanton filed an opposition to each motion to quash on October 1, 2018. A separate order granting or denying each motion to quash will be issued as to each entity.

[2] OAH has already issued three orders granting in part and denying in part motions filed by Student on September 27, 2018, asking that three other subpoenas duces tecum be quashed. In those orders it states that Student's attorney filed her supporting declaration for each motion on the same date the motion was filed. This was not accurate, but amended orders will not be issued to reflect the correct date the attorney's supporting declaration was filed because this information does not substantively affect those orders.

Thus, subpoenas are available to require the production of information that is reasonably necessary in order for a party to present their case at hearing. In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in the Code of Civil Procedure. Section 1985 of that Code governs the issuance of subpoenas. In accordance with that provision, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced at hearing. Parties must also comply with the consumer protections of Code of Civil Procedure section 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services*, (1993) 17 Cal.App.4th 1072.)

Motions to Quash in Special Education Proceedings

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 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 AND ORDER

On September 25, 2018, Pleasanton issued a subpoena duces tecum for records from Dr. Peterson, a psychologist who allegedly assessed Student in 2015. The October 2, 2018 declaration of Dr. Peterson, establishes that Pleasanton sent the subpoena duces tecum to an incorrect address for Dr. Peterson, and she never received it. In its amended opposition to the motion to quash filed on October 5, 2018, Pleasanton withdraws the subpoena duces tecum issued on September 25, 2018, and states that it issued a new subpoena duces tecum for Dr. Peterson that it sent to the correct address. A copy of that subpoena duces tecum, dated October 5, 2018, is attached.

Student's motion asks that OAH quash the September 25, 2018 subpoena duces tecum, and that subpoena duces tecum has been withdrawn. Student has not filed a motion to quash the October 5, 2018 subpoena duces tecum for Dr. Peterson's records. Therefore, the motion to quash Dr. Peterson's is denied because it is moot.

DATE: October 10, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings