BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VISTA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019020664 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

On February 19, 2019, Student filed with the Office of Administrative Hearings a request for due process hearing naming Vista Unified School District as a party. This matter is scheduled for hearing beginning May 29, 2019. On March 27, 2019, Student issued a subpoena duces tecum to Rebecca Nobriaga, the Executive Director of Special Education for Vista, or to "custodian," directing her to appear as a witness on April 16, 2019, at a location other than the scheduled hearing site and produce specified records at hearing. The subpoena further indicates she need not appear personally if she produces the requested records to Student's counsel by April 8, 2019. The subpoena duces tecum requires production of all communications, electronic or otherwise, from any employee, agent, or contractor of Vista regarding Student or Parents from February 19, 2019, through "the current date."

On April 11, 2019, Vista filed a motion to quash the March 27, 2019 subpoena duces tecum on the grounds that Student failed to make a showing of reasonable necessity for the requested communications; the documents sought are not relevant; the request is overbroad and vague; and the subpoena calls for impermissible prehearing discovery. Attached to Vista's motion is a copy of the subpoena at issue; a prior version of the subpoena issued on February 27, 2019; a sworn declaration of its counsel; and email correspondence between its counsel and Student's counsel.

On April 15, 2019, Student filed a response to the motion to quash requesting that OAH deny the motion and modify the subpoena by changing the date for production of records to the date of hearing.

APPLICABLE LAW

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).) The law accords 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 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

As the due process hearing in this matter is scheduled to begin on May 29, 2019, Student's subpoena directing Ms. Nobriaga or custodian to appear with the requested records on April 16, 2019, at OAH's San Diego office, or to instead send the records directly to Student's counsel on April 8, 2019, impermissibly requires the production of records prior to hearing. OAH declines to correct Student's subpoena duces tecum to reflect the actual hearing location or to otherwise modify it to require the witness to appear at hearing on May 29, 2019.

Student is attempting to subpoena any and all correspondence and communications, from any and all Vista staff or agents, including emails and text messages, that in any way refer to Student or Parents and which were generated on or after February 19, 2019, the date he filed for due process. While this is a narrow window of time, Student fails to make any showing of reasonable necessity in his declaration in support of his subpoena duces tecum. Instead, Student merely asserts the requested information is "material" as it relates to anticipated testimony and is required for Student to meet his burden of proof. Ordinarily, discovery of this kind is available in civil proceedings, if discovery of the information sought is likely to lead to the discovery of admissible evidence, but reasonable necessity is a significantly higher standard.

In his response to Vista's motion, Student states that he requires the requested information to prove that Vista predetermined Student's non-eligibility for special education. However, the subpoena does not specify this. The subpoena is overbroad as it is not limited

by reference to specific issues in Student's complaint but calls for every communication about Student or Parents sent or received by Vista. This broad request encompasses possibly privileged attorney-client communications, despite Student's protestation that he was not intending to seek such. Further, Student fails to include any showing as to how communications generated on or after February 19, 2019, would be reasonably necessary to prove a claim of predetermination of an individualized education program team meeting on February 5, 2019. For these reasons, Vista's motion to quash is granted.

ORDER

Vista's motion to quash Student's March 27, 2019 subpoena duces tecum directed to Rebecca Nobriaga or custodian is granted.

IT IS SO ORDERED.

DATE: April 19, 2019

DocuSigned by:
Theresa Ravandi
180B9BDB98E5424...

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings