BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017040192
v.	ORDER GRANTING STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM
DOWNEY UNIFIED SCHOOL DISTRICT.	

On April 19, 2017, Student filed a motion to quash a subpoena duces tecum, issued by Downey Unified School District on Student's private school of attendance, St. Mark's Elementary School. District did not oppose Student's motion.

This matter was filed on April 3, 2017 and is set for hearing on May 25, 2017. Student alleges that District denied Student a free appropriate public education from 2015 to the filing of the complaint by: (a) failing to offer the appropriate levels, nature, and types of services designed to meet Student's unique needs; (b) failing to create appropriate and measurable goals and objectives in all areas of need; (c) failing to have high expectations for progress; and (d) failing to timely hold annual IEP meetings. Student seeks relief including reimbursement of past and future tuition costs for Student's private school placement, reimbursement for tutoring, and compensatory education.

On April 14, 2017, District notified Student that District had served a subpoena duces tecum on St. Mark's. District's subpoena duces tecum was not directed towards a particular person at St. Marks, nor did it call for anyone from St. Marks to appear as a witness at hearing, or deliver documents to the hearing. The subpoena indicated that St. Marks was not required to appear at hearing if it sent certain records and a completed custodian of records declaration to the offices of District's counsel by May 5, 2017. The subpoena did not identify the hearing date or location. District's subpoena described the records to be produced produce as:

> All documents and electronically stored information, including, but not limited to, all student records, correspondence, emails, memoranda, assessments, completed test protocols, notes, faxes, recordings, messages, summaries, data compilations, analyses, charts, graphs, progress reports, settlement agreements, opinions, calendars, diaries, journals, bills, invoices, and transcriptions, recordings, and/or memoranda of any telephone conversation, conference, voicemail or text message, meeting or any other type of communication from April 1, 2015 through the present that refer or relate to

[Student], or [Parents], and the placement and services [Student] received or was recommended to receive during this time period.

APPLICABLE LAW

Prehearing Discovery

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act or Education Code. The Education Code provides parties prehearing access to only two types of documents: (i) parents have the right to request and receive their child's educational records within five business days at any time (Ed. Code § 56504), and (ii) all parties to a due process proceeding are entitled to receive copies of all the documents the parties intend to use at hearing, not less than five business days prior to the hearing (Ed. Code § 56505, subd. (e)(7)).

The IDEA does give parties the right to compel witnesses to attend "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. (Ed. Code, § 56505, subd. (e).) Title 5 of the California Code of Regulations, section 3082, subdivision (c)(2) authorizes the use of subpoenas to compel attendance at hearing, and subpoenas duces tecum to compel witnesses to produce documents at hearing upon the subpoenaing party's showing of reasonable necessity. The Code of Regulations specifically exempts special education due process hearings from the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (5 Cal. Code Regs., tit. 5, § 3089, [Govt. Code, §§ 11450.05-11450.30].)

Reasonable Necessity

A subpoena duces tecum may be enforced in a special education due process proceeding only on a showing that the requested documents are reasonably necessary for the requesting party to present a case at hearing. (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2)). This standard is stricter than the general Administrative Procedures Act standard of "good cause" for issuance of subpoenas duces tecum, adopted from Code of Civil Procedure, which authorizes service of a subpoena duces tecum, if accompanied by an affidavit showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control. (Code of Civ. Proc., § 1985, subd. (b) [adopted into the APA at Gov. Code § 11450.20, subd. (a)].)

Special education law does not specifically address motions to quash subpoenas duces tecum. In ruling on such motions, the OAH relies by analogy on the relevant portions of Code of Civil Procedure, section 1987.1, which provide 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

District's subpoena duces tecum seeks prehearing discovery. It is essentially a document production request that calls for St. Marks to produce certain documents to District's counsel at their offices three weeks prior to the hearing. Production of documents at the hearing is not listed as an option, and the subpoena does not identify the hearing date or location.

District did not oppose Student's motion to quash, and so did not make the requisite showing of why the documents sought in the subpoena duces tecum were reasonably necessary for District to present its case at hearing. None of the documents sought from St. Marks appear to relate to the issue of whether District denied Student a FAPE. Some may relate to the reimbursement and compensatory education remedies sought by Student, but it is not clear merely from the face of the subpoena that any of the requested documents are reasonably necessary for District to present its case at hearing. It therefore would be inappropriate to modify the subpoena based on the information available.

Student's motion to quash District's subpoena duces tecum in its entirety is therefore granted.

ORDER

1. Student's motion to quash District's subpoena duces tecum served on St. Mark's Elementary School is granted. St. Marks is not required to produce any documents in response to the subpoena duces tecum.

DATE: May 4, 2017

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ROBERT G. MARTIN
Administrative Law Judge
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Office of Administrative Hearings