

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024090624

ORDER GRANTING MOTION TO QUASH SUBPOENA
DUCES TECUM

OCTOBER 15, 2024

On September 18, 2024, Student filed a Due Process Hearing Request with the Office of Administrative Hearings, naming Compton Unified School District. The Office of Administrative Hearings is called OAH. Student alleges among other things that Compton Unified breached its child find obligations by failing to search, identify and serve Student in a timely manner within the statutory period.

OAH scheduled the hearing for November 5 through 7, 2024.

On October 1, 2024, Student's counsel issued a subpoena duces tecum to the "Person Most Knowledgeable of the Records Subpoenaed Herein" by emailing the

subpoena to Compton Unified's attorney. By the subpoena, Student seeks production on October 22, 2024, of "[a]ny and all records pertaining to District's child find activities" during the 2023-2024 school year for children who reside within the geographic boundaries of the elementary school Student attended.

On October 4, 2024, Compton Unified filed a motion to quash the subpoena on the grounds that Student is seeking impermissible discovery through the subpoena process evidenced by the October 22, 2024 production date. Compton also argues that the subpoena is overbroad because it has not been tailored to Student's case.

On October 9, 2024, Student filed opposition to the motion to quash. Student argues that he is not engaged in pretrial discovery but was attempting to provide reasonable notice to Compton Unified to produce the documents, and that Student would not have access to the documents until the first day of hearing. Student also argues that the subpoena is not overbroad because he has narrowed the request to Student's elementary school for the 2023-2024 school year.

The Individuals with Disabilities Education Act, called 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); see also 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 Regs., tit. 5, § 3082, subd. (c)(2).)

In general, there is no right to prehearing discovery in due process proceedings. Rather, 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, 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, §§ 56504 & 56505, subd. (e)(7).)

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

Here, Student's subpoena duces tecum is defective for at least three reasons. First, the subpoena fails to indicate the entity to whom it is directed, although it was apparently intended for Compton Unified because of the email address identified on the face page of the subpoena.

Second, the subpoena improperly requires compliance by October 22, 2024, a date well prior to the November 5, 2024 hearing date. Apart from "education records," Compton Unified correctly argues that special education law does not contain any provision authorizing prehearing discovery. A party does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulation securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself. Because Student has failed to establish that requested records are "education records," Student's

subpoena duces tecum seeking pre-hearing production of the requested records on October 22, 2024, is improper.

Finally, the subpoena fails to demonstrate reasonable necessity for production of the requested records. A subpoena duces tecum seeking production of documents on the day the hearing commences may be appropriate if the requisite showing of "reasonable necessity" is adequately made in a declaration supporting the subpoena and assuming no other legal bar to production exists. Here, however, the declaration attached to the subpoena fails to demonstrate the relevance or materiality of the requested documents to the issues in the amended complaint, let alone establishing that the documents are "reasonably necessary" for Student to present his case at hearing. The declaration merely offers one conclusory sentence that the documents are reasonably necessary for Student's child find issue, without any factual support. This is inadequate.

ORDER

Compton Unified's motion to quash Student's subpoena duces tecum is granted. The subpoena duces tecum is quashed in its entirety.

Laurie Gorsline

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Administrative Law Judge

Office of Administrative Hearings