BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL DISTRICT,

OAH CASE NUMBER 2019120777

and

BAKERSFIELD CITY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020010042

ORDER GRANTING MOTION TO QUASH SUBPOENA WITHOUT PREJUDICE

JANUARY 30, 2020

On December 18, 2019, Student filed a request for due process hearing with the Office of Administrative Hearings, referred to as OAH, naming Bakersfield City School District. On December 31, 2019, Bakersfield City filed a request for due process hearing naming Parent on behalf of Student. On January 8, 2020, OAH granted Bakersfield City's

motion to consolidate the two cases. The consolidated hearing is scheduled for February 11, 12, and 13, 2020, pursuant to a Scheduling Order issued in Student's case.

On or about January 21, 2020, Bakersfield City issued a subpoena duces tecum accompanied by a Notice to Consumer on Dr. Paula Santos and ACT Psychology. The subpoena sought records pertaining to Student to be delivered on the first day of hearing.

Student's counsel learned about the subpoena from Dr. Santos. Student filed a motion to quash the subpoena on January 24 claiming that Bakersfield City failed to serve the subpoena and Notice to Consumer on Student or Student's counsel. On January 29, 2020, Bakersfield City filed an opposition to the motion to quash. Bakersfield City acknowledged that its attorney "inadvertently" served only Dr. Santos with the subpoena and Notice to Consumer. However, it corrected its omission on January 28, 2020, by serving Student's counsel with the Notice to Consumer and subpoena. Student filed a reply with OAH on January 29, 2020.

A party to a due process hearing under the Individuals with Disabilities in Education Act has the right to present evidence and compel the attendance of witnesses in "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, the hearing officer has the right to issue an order to produce documents, known as a subpoena duces tecum, upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) This requirement mirrors that required by Code of Civil Procedure section 1985, subdivision (b),

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

California law requires that a Notice to Consumer be served on the subject of a subpoena for personal records not less than 10 days prior to the date for production of records plus the additional time required based on the method of service per Code of Civil Procedure section 1013. It also requires that the subpoena be served on the consumer five days prior to serving the witness, with additional time provided for mailing. (Code Civ. Proc., § 1985.3, subd. (b).) Personal records are those records, whether maintained on paper or electronically, that are sought from those providing personal service to a party such as health care providers, psychiatrists, bankers, pharmacists, laboratories, insurance companies, telephone service providers and schools to name a few. (Code Civ. Proc., § 1985.3, subd. (a)(1).) The proof of service of the notice to consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).)

Here, the subpoena at issue seeks Student's personal records. As evidenced by this motion, Student was not deprived of the right to timely move to quash the subpoena before the records were produced, which is the fundamental basis for the requirement of notice. Student's counsel had the opportunity to challenge the subpoena in all respects in this motion. Nevertheless, Student's sole reason for moving to quash was based on improper notice because Bakersfield City did not serve the Notice to Consumer on Student before the subpoena was served on the witness.

Therefore, the motion is granted without prejudice based upon improper notice. Bakersfield City may reissue the January 21, 2020 subpoena duces tecum, ordering the production of documents for the first day of hearing to be delivered to the hearing location, to Dr. Santos and ACT Psychology. The subpoena shall include a proof of service establishing for the witness that the Notice to Consumer was served on Student or his attorney.

IT IS SO ORDERED.

DocuSigned by:
Adrienne L. Krikorian
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Adrienne L. Krikorian

Administrative Law Judge

Office of Administrative Hearings