BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN RAFAEL CITY HIGH SCHOOL DISTRICT AND NOVATO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015021034 ORDER QUASHING SUBPOENAS DUCES TECUM

On February 23, 2015, Student filed a Due Process Hearing Request (complaint), against the San Rafael City High School District and the Novato Unified School District, with the Office of Administrative Hearings (OAH). The matter was set for expedited prehearing conference on March 20, 2015, and expedited hearing on March 24, 2015.

On March 11, 2015, Attorney for Student served two Subpoena Duces Tecum (subpoenas) on the attorney for San Rafael, which requested various records from the attorney, and from San Rafael. On March 18, 2015, the attorney for the District filed a Motion to Quash the subpoenas on the grounds that the subpoenas were not properly authorized, failed to establish reasonable necessity, were overbroad and burdensome, and constitute impermissible prehearing discovery. No response was received from Student to the Motion to Quash the subpoenas.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing (20 U.S.C §1415(h)(2); Ed. Code, § 56505, subds. (e)(2) and (3).) A parent may obtain his or her child's educational records (Ed. Code § 56504).), and parents are entitled to receive copies of all the documents a district intends to use at hearings no less than five days prior to the hearing (Ed. Code § 56505, subd. (e)(7).).

The provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal. Code Regs., tit. 5, § 3089.). Nonetheless, California Code of Regulations, title 5, section 3082, subdivision (c)(2) sets forth the right of the parties in a special education hearing to compel the attendance of witnesses in a hearing. In pertinent part, it provides that, "[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)."

Since special education law does not specifically address whether a subpoena may be issued by an attorney, or whether or how an SDT may be quashed. OAH looks at the relevant provisions of the California Code of Civil Procedure for guidance. Code of Civil Procedure, section 1985, subdivision (c) provides that an attorney of record in an action may sign and issue a subpoena to require production of the matters or things described in the subpoena. When evaluating subpoenas or ruling on a motion to quash a subpoena, OAH looks at the California 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. There is no right to prehearing discovery under the IDEA.

DISCUSSION

Student's subpoenas are unsigned and both are not properly authorized, either by a Judge or signed by an attorney as required by law. In addition, the subpoenas requested various documents and communications relating to Student, and requested that the documents be produced to Student's attorney by March 13, 2015, or at such other date prior to the expedited hearing. Applicable Federal and California statutes and regulations do not permit prehearing discovery in special education proceedings. They provide for an alternate system that relies on access to pupil records and exchange of exhibits and witness lists. (See Ed. Code, §§ 56504, 56505, subd. (e).) Therefore, while the San Rafael raised numerous grounds to quash the subpoenas, all need not be addressed here because Student's subpoenas were unsigned and requested the production of documents before hearing. Accordingly, San Rafael's motion to quash is granted.[1]

ORDER

San Rafael's Motion to Quash the Subpoenas Duces Tecum is granted.

DATE: March 20, 2015

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

[1] Nothing in this order prevents Student from re-issuing valid and appropriate subpoenas or San Rafael from raising any evidentiary objections to new subpoenas.