BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SONORA UNION HIGH SCHOOL DISTRICT, SUMMERVILLE UNION HIGH SCHOOL DISTRICT, SOULSBYVILLE ELEMENTARY SCHOOL DISTRICT, AND TUOLUMNE COUNTY SUPERINTENDENT OF SCHOOLS.

OAH CASE NUMBER 2019070252

ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM TO CUSTODIAN OF RECORDS FOR ADVENTIST HEALTH SONORA

On July 8, 2019, Student filed a Due Process Hearing Request with the Office of Administrative Hearings, referred to as OAH, naming Sonora Union High School District, Summerville Union High School District, Soulsbyville Elementary School District, and Tuolumne County Superintendent of Schools as parties. Student identifies as an issue for hearing whether the respondents denied her a free appropriate public education by failing to offer a residential placement for the 2018-2019 and 2019-2020 school years. This matter is scheduled for hearing beginning October 15, 2019.

On September 20, 2019, counsel for respondents issued a subpoena duces tecum to the custodian of records for Adventist Health Sonora. This subpoena directs the custodian to produce records on the first day of hearing relating to Student's psychiatric hold or hospitalization on or about August 28, 2018. On September 20, 2019, counsel for respondents sent Student a Notice to Consumer regarding the requested records, a copy of the subpoena duces tecum and accompany affidavit, and proof of having served the subpoena via certified mail on that same date.

On September 27, 2019, Student filed a motion to quash the subpoena duces tecum on the grounds that respondent failed to comply with section 1985.3 of the Code of Civil Procedure by not timely providing notice to Student. Student also asserts that the subpoena erroneously directs the custodian to produce records to a non-party, namely Rocklin Unified School District. Finally, Student argues the subpoena fails to make a showing of reasonable necessity.

The respondents have not filed a response.

APPLICABLE LAW

In special education proceedings in California, the hearing officer shall have the right to issue subpoenas for witness to appear and testify, and to issue subpoenas duces tecum for the production of documents upon a showing of reasonable necessity by a party. (Cal. Code of Regs., tit 5 § 3082, subd. (c)(2).) Special education law does not specifically address what additional requirements apply to such a subpoena. In this regard, California Code of Regulations, title 5, section 3089 specifies that the subpoena provisions for the Administrative Procedure Act (Government Code sections 11450.05 to 11450.30) do not apply in special education due process haring matters. Therefore, it is

appropriate to analogize to the relevant portions 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 duces tecum to require production of the matters or things described in the subpoena. Section 1985, subdivision (b) requires that a subpoena for trial specify the exact documents to be produced, setting forth in full detail the materiality of those documents to the issues in the case.

Anyone who seeks to obtain personal records pertaining to a consumer in connection with a civil action or proceeding must take certain steps to notify the consumer that his or her personal records are being sought. (Code Civil Proc., § 1985.3, subd. (b).) Such notice to the consumer must be made at least five days before issuing the subpoena to the custodian, plus the additional time required by Section 1013 if the service is by mail. (*Ibid.*) A party subpoenaing confidential third party records in an administrative proceeding must comply with the notice protections of section 1985.3. (*Sehlmeyer v. Dept. of General Services* (1993) 17 Cal.App.4th 1072.)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on a motion to quash a subpoena duces tecum, OAH also relies by analogy on the relevant portions of 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.

DISCUSSION

Counsel for respondents failed to timely provide Student with notice that her personal records were being sought. Further, the subpoena calls for the custodian of

records to release Student's personal records to a non-party. Based on these combined deficiencies, Student's motion to quash is granted. Given this order, no determination is made as to whether the subpoena duces tecum makes a showing of reasonable necessity.

ORDER

Student's motion to quash the subpoena duces tecum to the custodian of records for Adventist Health Sonora is granted.

DATED: October 4, 2019

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Theresa Ravandi
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Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings