BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018090118
v.	ORDER GRANTING, IN PART, STUDENT'S MOTION TO QUASH
ROCKLIN UNIFIED SCHOOL DISTRICT.	

On September 5, 2018, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Rocklin Unified School District as respondent. In his complaint, Student alleges, among other things, that the April 2017, May 2018 and August 23, 2018 individualized education programs failed to offer him a free appropriate public education because they failed to offer an appropriate placement, transportation, and behavior support. Student's claims are based, in part, on a May 2017 altercation on the school bus, after which he was taken to the emergency room and placed on a psychiatric hold as a danger to himself or others, and on an August 27, 2018 involuntary hold in the emergency room. Student also alleges District's May 2018 assessment report failed to mention Student had been placed on five involuntary holds, four stemming from incidents at school during the prior year. Student alleges that he has not attended school during the 2018-2019 school year and needs a nonpublic school or residential placement because his mental health is regressing.

On October 9, 2018, Student filed a motion to quash, and on October 11, 2018, an amended motion to quash. The motions seek to quash five subpoenas duces tecum issued by Rocklin for production of Student's records on October 30, 2018, the first day of hearing from UC Davis Medical Center; Kaiser Permanente; Sutter Roseville Medical Center, Sutter Medical Plaza Rocklin and Sutter Center of Psychiatry. Student contends that the subpoenas are overbroad, vague and seek documents which are not relevant. Student claims there has been no adequate showing of reasonable necessity in the declaration supporting the subpoenas, and that Student's counsel has already agreed to produce the psychiatric records and sent releases to Rocklin for access to Student's cardiologist and psychiatrist.

On October 15, 2018, Rocklin filed opposition to the motion. Rocklin contends that the scope of subpoenas correspond to the scope of Student's issues, that Student's promise to provide documents do not affect Rocklin's need for the documents, and Student's releases are too narrow. Rocklin claims it requires the documents because Student contends the assessments and offers of FAPE were inappropriate due to facts surrounding Student's medical needs and hospitalizations, and the recent request for the possibility of a residential placement.

On October 22, 2018, a prehearing conference was held. The ALJ ordered that the parties exchange witness exhibits on October 23, 2018, and that the hearing begin on October 30, 2018.

APPLICABLE LAW AND DISCUSSION

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.). Rather, 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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings, but does not confer the right to prehearing discovery. (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 of Regs., tit. 5, § 3082, subd. (c)(2).) 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 (Ed. Code, § 56504), 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, § 56505, subd. (e)(7).)

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

Here, Rocklin failed to make any showing of reasonable necessity with regard to the subpoenas to Kaiser Permanente, Sutter Roseville Medical Center, and Sutter Medical Plaza Rocklin. According to Student, he was only hospitalized at Sutter Center for Psychiatry and placed on multi-day holds at UC Davis Medical Center. District does not persuasively rebut this claim. District's assertion that there is "ample reason to infer subpoenas to other hospitals are necessary" is insufficient to meet the reasonable necessity standard. On this ground alone, the subpoenas to Kaiser Permanente; Sutter Roseville Medical Center, and Sutter Medical Plaza Rocklin were inappropriate and are quashed in their entirety.

The subpoenas to Sutter Center for Psychiatry and UC Davis Medical Center contain eight categories of documents. Although the subpoenas have a separate section generally addressing "reasonable necessity," that section does not specifically address why the requested documents, by category, are reasonably necessary to the issues at hearing. Rocklin stated that the documents are necessary to establish Student's residency, but none of the

categories specifically address residency or are limited to that issue, and Rocklin does not specifically explain how each of the eight categories of documents are necessary to this issue. Next, Rocklin claimed it needed the documents to prove that its assessments contained sufficient information about the hospitalizations; however, Student's complaint alleges Rocklin omitted reference to the hospitalizations, not that there was insufficient discussion about the hospitalizations. Rocklin also stated it needed the records to address Student's allegations that the hospitalizations were educationally related, his request for placement, and whether District provided FAPE. Again, District does not specifically explain how each of the eight categories of documents are necessary to each of these issues.

Notwithstanding, the foregoing, it is apparent from the papers that Student believes at least some of the hospital records are necessary to the issues at hearing, because Student has agreed to produce them on October 23, 2018 as part of their evidence disclosures with the intent to rely upon them at hearing. It is unclear from the papers whether this production will include all or only some of the hospital and hold records; and what documents have now been produced to District. To the extent that some of the records have since been produced by Student, all or portions of the subpoenas may now be moot. If Student has been selective in the documents produced, District may be entitled to some of the additional documents so it has all of the relevant documents on a particular incident. However, this assumes none of the records are barred by the "snaphot" rule, which neither party has addressed. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

Contrary to Student's arguments, the releases do not negate the right to subpoena the documents assuming reasonable necessity is otherwise established. On their face, the releases signed by Parent do not permit Rocklin to use at hearing the documents obtained. Specifically, the releases limit disclosure of information to the Rocklin school nurse and school psychologist, for the purpose of "IEP planning." In any event, the releases are directed to Student's psychiatrist and cardiologist, not Sutter Center for Psychiatry and UC Davis Medical Center, and the psychiatrist claims to have no hospital or hold records.

Accordingly, with regard to the subpoenas issued to Sutter Center for Psychiatry and UC Davis Medical Center, further clarification from the parties is required, which the parties shall be prepared to provide on the first day of hearing.

ORDER

1. Student's motion to quash is granted as to the subpoenas to Kaiser Permanente; Sutter Roseville Medical Center, and Sutter Medical Plaza Rocklin.

2. Student's motion to quash with regard to the subpoenas issues to Sutter Center for Psychiatry and UC Davis Medical Center shall be addressed by the ALJ on the first day of hearing.

IT IS SO ORDERED.

DATE: October 24, 2018

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings