BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013051091 ORDER GRANTING MOTIONS TO QUASH SUBPOENAS DUCES TECUM

On March 25, 2014, Santa Monica-Malibu Unified School District (District) filed a motion to quash the subpoenas duces tecum (SDT's) served by Student and Parents (collectively, Student) on District employees Sara Woolverton, Rena Baum-Merino, Cam-An Vo-Navarro, and Judith Hinojosa-Risuech. On March 26, 2014, District filed a motion to quash the SDT's served by Student on District employees Aisha Webb, Yunven Valencia, Megan Lichter, Jessica Garrido, Laura Simone, and Al Trundle. Except for Sara Woolverton, all of these individuals are high school advisors in the District. Both motions were based on the grounds that the SDT's required production of documents before the hearing, the STD's did not include any showing of reasonable necessity for the production of the records, the SDT's sought confidential student records, and the SDT's were overbroad and vague.

On March 25, 2014, Student filed opposition to the motions to quash. Student contended that the SDT directed to Dr. Woolverton did not request production of any documents before the hearing, and that the remaining SDT's did not compel production of documents before the hearing, but only requested production of the documents before the hearing so that the subpoenaed employees would not have to appear at hearing. Student also contended that the SDT's did not request confidential Student records. Student contends that the documents are required because "in the past" District witnesses have not been able to answer questions regarding "the impact of college admissions for students who have experienced placement in the District's segregated special-day SAI [specialized academic instruction] classes." Therefore, Student wishes to have such documents available to refresh the recollection of these witnesses.

Subsequent to the filing of the moving papers and opposition papers, the parties filed additional pleadings, variously titled "Reply," and "Sur-Reply" in support of their respective positions, none of which they were specifically authorized to file. These additional pleadings were considered only to the extent that they contained a representation by Student that Student had "filed supplemental subpoenas that provided good cause."

Also subsequent to the filing of their opposition papers, Student's counsel realized that they had not properly filled out the subject SDT's, such that the SDT's did not contain any information regarding materiality or good cause for production. On March 28, 2014, Student filed yet more pleadings responding to the motions to quash, asserting that supplemental SDT's containing the information regarding materiality and good cause had been filed with OAH, and that copies of same were attached to their additional pleadings. In the interests of judicial economy, on the assumption that these supplemental SDT's have issued and are now the operative SDT's, and also on the assumption that District has the same objections to these supplemental SDT's as it stated in its motions to quash the original SDT's, this ALJ will consider the initial SDT's to be withdrawn, and will consider the District's motions to quash as though they were directed to the supplemental SDT's.

SDT's in OAH Special Education Due Process Hearings

California Code of Regulations, title 5, section 3082, subdivision (c)(2) provides that the hearing officer may issue SDT's upon a showing of reasonable necessity by a party. 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 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. Code of Civil Procedure 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.

Code of Civil Procedure section 1985.3, subdivisions (a) & (b) specifies that writings or other information pertaining to a consumer, which are maintained by a "witness" who is a public secondary school are personal records of a consumer, and may not be subpoenaed without giving personal notice to the consumer a specified time prior to the date for production of the records, and giving proof of such notice to the witness. If such procedures are not followed, the witness need not produce the documents. (Code Civ. Proc, §1985.3, subd. (k).) Code of Civil Procedure section 1985.3, subdivision (i) provides for limited exceptions to this procedure, such as when the SDT's require that the witness delete all information which would in any way identify any consumer whose records are to be produced.

DISCUSSION

The SDTs Directed to the High School Advisors

All of the subpoenas directed to the District's high school advisors seek the identical documents. In summary, they request copies of all files of students whom the witness has

advised from the 2010-2011 school year through the 2013-2014 school year, who were eligible for special education and related services and had an Individualized Education Plan (IEP). In a separate category, the SDT's request copies of all special education students' files whom the witness has advised, who were enrolled in SAI classes. The SDT's request that both "redacted copies" and, oxymoronically, "original copies" of these documents be produced. The SDT's do not specify what redactions the witness is to make. The SDT's also specify that the "original copies" are to be delivered to the ALJ for in camera review.

With respect to materiality and good cause, these supplemental SDT's state the following: (1) that Student required the records to demonstrate that the District's segregated SAI classes do not prepare students to apply to University of California (UC) or California State University (CSU) campuses; (2) that "in the past, District witnesses" had been unprepared to answer questions regarding who students who attend SAI classes fare in post-secondary placement, and these documents will allow the witnesses to "refresh their recollection," and (3) that Student's counsel "believes" that the records are relevant and necessary to prove key elements of the case.

The motions to quash are granted as to these SDT's. First, the SDT's violate Code of Civil Procedure section 1985, subdivision (b), in that they specify documents by categories, instead of specifying "the exact matters or things" desired to be produced. This lapse is exacerbated by the fact that the subpoenas do not hint at what information was to be redacted in the "redacted copies." Second, to the extent that the SDT's seek production of the "original copies," they violate Code of Civil Procedure section 1985.3, as such documents constitute personal records of a consumer, and there has been no showing that any of the consumers were notified that their personal educational records were sought. Third, the SDT's violate Code of Civil Procedure section 1985, subdivision (b), in that Student has not shown that any of the documents sought are material to the issues in this case. The issues in this case involve the IEP of a single child, and whether the District offered a FAPE to that child. As part of this inquiry, there is an issue as to whether District offered Student sufficient A-G courses. However, the courses other children took, the post-secondary future to which they aspired, and their post-secondary accomplishments, have nothing to do with this child's IEP and whether the District offered a FAPE to her. Fourth, Student's vague statement that at an unspecified time in the past, certain unspecified witnesses were unable to answer an unspecified person's unspecified questions in an unspecified matter and therefore the requested documents are needed to refresh these unnamed witnesses' recollections simply cannot provide any support for these SDT's. Fifth, the breadth and scope of the SDT's are overbroad and burdensome. Indeed, they are akin to requests for production of documents such as one might serve for discovery in civil cases, and there is no provision for any such discovery requests in special education due process hearing proceedings.

The SDT Directed to Sara Woolverton

The SDT directed to Sara Woolverton seeks, in summary, (1) the complete course catalogs and the complete schedule for all classes for all periods for Santa Monica High School (SAMOHI) for all school years from 2010-2011 through 2013-2014; (2) "Redacted

copies" of the files of all students who had IEP's and were enrolled in SAI classes at SAMOHI and classes offering A-G credits at any point during the 2010-2011 through 2013-2014 school years, and, separately, "redacted copies" of such files for students who transitioned to two-year colleges, four-year colleges, and the UC and CSU colleges; and (3) All A-G credit applications drafted and submitted to the California Department of Education for SAI classes at SAMOHI during the 2010-2011 through the 2013-2014 school years. Additionally, "original copies" of the redacted files described above are to be presented to the ALJ. The materiality and good cause justification standard for this SDT is the same as that stated for the SDT's directed to the advisors, which was summarized above.

This SDT is also defective and the motion to quash is granted as to this SDT, for many of the same reasons as were expressed above with respect to the advisor's SDT's. First, as was stated above, the SDT's violate Code of Civil Procedure section 1985, subdivision (b), in that they specify documents by categories, instead of specifying "the exact matters or things" desired to be produced. This lapse is exacerbated by the fact that the subpoenas do not hint at what information was to be redacted in the "redacted copies." Second, as was also stated above, to the extent that the SDT's seek production of the "original copies," they violate Code of Civil Procedure section 1985.3, as such documents constitute personal records of a consumer, and there has been no showing that any of the consumers were notified that their personal educational records were sought. Third, the SDT's violate Code of Civil Procedure section 1985, subdivision (b), in that Student has not shown that any of the documents sought are material to the issues in this case. The issues in this case involve the IEP of a single child, and whether the District offered a FAPE to that child. There is an issue as to whether SAMOHI offered Student A-G classes, but there has been no showing that "complete" SAMOHI course catalogs and course schedules for every class period have a material relationship to the issues in this case. Similarly, there has been no showing that District's course applications with CDE for SAI courses have a material relationship to the issues in this case. With respect to the request for other student's files, as was stated above, the courses other children took, the post-secondary future to which they aspired, and their post-secondary accomplishments, have nothing to do with this child's IEP and whether the District offered a FAPE to her. Fourth, as was stated above, the justification that these documents are needed to refresh witness recollection is too vague to have any meaning. Finally, as has been stated above, the SDT's are overbroad and burdensome, and are more akin to discovery requests which are not authorized in special education due process hearing proceedings.

ORDER

For all of the foregoing reasons, the motions to quash the SDT's are granted.

DATE: March 28, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings