BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017081081
PARENT ON BEHALF OF STUDENT, v. PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090065 ORDER DISMISSING DISTRICT'S SUBPOENAS DUCES TECUM TO PRODUCE DOCUMENTS FOR DUE PROCESS HEARING

On August 24, 2017, Parent on behalf of Student filed a Request for Due Process hearing naming the Placentia-Yorba Linda School District as respondent. On September 1, 2017, District filed a Request for Due Process hearing naming Student. On September 11, 2017, OAH granted District's Motion to consolidate the two complaints.

On September 29, 2017, District's counsel, Jennifer Fant, issued subpoenas duces tecum addressed to the custodian of records for Regional Center Orange County, Fullerton Head Start, Eastside Christian Elementary School, Center for Autism and Related Disorders (CARD), and Maxum Therapy, respectively. The subpoenas contained requests for documents to be produced by the individual custodians of records on the then first day of hearing, October 18, 2017, in the consolidated cases. On October 4, 2017, the parties submitted to OAH a joint request for continuance of the consolidated cases, and OAH issued an Order continuing the cases that same day. The first day of hearing in the consolidated cases was continued from October 18, 2017 to January 16, 2018.

On October 5, 2017, Student filed a motion to quash the subpoenas.[1] In her motion, Student contends that OAH should quash the subpoena duces tecum on grounds that (1) there

[1] The Declaration of Student's Mother identified four subpoenas issued and served by District, but five subpoenas were attached to Student's Motion as exhibits. The Motion itself and the accompanying points and authorities only referred collectively to subpoenas and

is no discovery in California administrative due process hearings; (2) there is no ability for a party to a California due process hearing to subpoena documents prehearing; (3) the subpoenas fail to contain a statement to establish that the confidential records requested by District are reasonably necessary for hearing and/or the establishment of District's issues; (4) the requested records are confidential by State law and releasable only upon application and Court order; (5) the records requested by the subpoenas are irrelevant to the local educational agency's duty to provide a free appropriate public education to Student; and (6) the subpoenas are over-broad as they do not do not limit the time period for the documents requested.

On October 10, 2017, District filed an opposition to the motion to quash.

APPLICABLE LAW

Federal law provides for the rights 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).) Both of those subsections relate only to due process hearings, not to any prehearing procedures. A party does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulation securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself.

Similarly, California law extends the rights to present evidence and compel the attendance of witnesses only to "[a] party to a hearing held pursuant to this section ..." (Ed. Code, § 56505, subd. (e).) That section of the Education Code only addresses the rights of parties during a due process hearing. Section 56505, subdivision (a) provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Board of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum.

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 the California Code of Civil Procedure. Section 1987.1 of that code 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.

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offered general objections to each subpoena without identifying the objects of the subpoena(s).

DISCUSSION

District's subpoenas duces tecum requested that the respective custodians of records appear at hearing and produce the requested records on October 18, 2017, the day the hearing was scheduled to commence. The first day of hearing is now January 16, 2018.

Student contends that OAH should quash the subpoenas duces tecum on grounds that a party to a special education due process hearing may not obtain documents before a hearing by way of a subpoena duces tecum. Student's argument correctly summarized the state of pre-hearing discovery in a special education cases in California. Given the joint request for continuance of the hearing following the issuance of the subpoenas and the subsequent Order continuing the hearing dates for the consolidated cases, the subpoenas as presently issued required the production of documents prior to hearing. As such, the subpoenas are now invalid on their face. Thus, the five subpoenas are quashed without prejudice.

ORDER

District's subpoenas duces tecum addressed to the custodian of records for Regional Center Orange County, Fullerton Head Start, Eastside Christian Elementary School, Center for Autism and Related Disorders (CARD), and Maxum Therapy, respectively, are quashed without prejudice.

IT IS SO ORDERED

DATE: October 17, 2017

DocuSigned by:
Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings