BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CITRUS SPRINGS CHARTER SCHOOL,	OAH Case No. 2018100703
CITRUS SPRINGS CHARTER SCHOOL, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019020360 ORDER GRANTING IN PART AND DENYING IN PART STUDENT'S MOTION TO QUASH SUBPOENAS DUCES TECUM

On March 8, 2019, Student filed a motion to quash subpoenas duces tecum, issued by Citrus Springs Charter School to Joanna Leal, Bea Braun, and Douglas Stephey. On March 13, 2019, Citrus Springs filed an opposition. Student filed a reply to the opposition on March 14, 2019.

APPLICABLE LAW

Prehearing Discovery in Special Education Due Process Proceedings

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 due process hearing. (20 U.S.C. § 1415(h).) The California Education Code provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

Education Code, section 56505, subdivision (a), states that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department 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. These regulations specifically disallow the provisions of the Administrative Procedures Act for other administrative hearings that provide broader authority for the use of

subpoenas. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

Although subpoenas duces tecum are available in special education due process proceedings, their use must be consistent with the legislative and regulatory framework of these proceedings, which accord prehearing access to only to two types of documents: (i) educational records, which parents have the right to request and receive within five business days at any time (Ed. Code § 56504), and (ii) all documents which the opposing party intends to present at hearing, which must be provided not less than five business days prior to the hearing (Ed. Code § 56505, subd. (e)(7)).

Reasonable Necessity for Production

The standard for issuance of a subpoena duces tecum in a special education due process proceeding is "reasonable necessity" (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2)), requiring a specific showing that the requested documents are reasonably necessary for the requesting party to present a case at hearing. This standard is stricter than the general Administrative Procedure Act standard of "good cause," adopted from the civil procedure code. That standard requires the moving party to specify by affidavit "the exact matters or things desired to be produced, [and set] forth in full detail the materiality thereof to the issues involved in the case..." (Code of Civ. Proc., § 1985, subd. (b) [adopted into the APA at Gov. Code § 11450.20, subd. (a)].)

Special education law does not specifically address motions to quash subpoenas. In ruling on such motions, the OAH relies by analogy on the relevant portions of 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. OAH employs this process in ruling on motions to quash, as modified by special education's unique procedures and standards.

DISCUSSION

The Parties under Subpoena

Student's complaint alleges that Citrus Springs has failed to meet Student's needs in a variety of areas, including vision, hearing, and sensory processing. Douglas Stephey is a Doctor of Optometry whom Student has designated as both a percipient and expert witness. Bea Braun is Doctor of Audiology designated by Student as a witness. Student's prehearing conference statement reports that she will testify as to her "findings" about Student. Joanna Leal is a board certified behavior analyst whom Student has designated as a witness for the due process hearing.

Citrus Springs seeks production of six types of documents from each witness. First, it seeks drafts and final versions of any report of assessment of Student. It also seeks any documents consider by the witnesses considered in connection with any assessment, all testing protocols and notes related to any assessment, and any documents related to being retained as an assessor by Student. Also requested are all documents used in preparation for testimony at hearing. Finally, Citrus Springs seeks all communications between the witnesses and Student's Parent or the advocate Peter Attwood.

To the extent that Citrus Springs seeks documents connected with expert testimony, such as those records prepared by or relied upon by the witnesses in forming their opinions and recommendations regarding any report on Student's needs and for testimony at hearing, those documents are clearly relevant to the proceedings here and should be produced to Citrus Springs at the start of hearing.

Citrus Springs also seeks communications between Student's Parent and the witnesses and Mr. Attwood. Although not raised as an issue in Student's motion, the request is overbroad in that it seeks all communications and not just those connected with Student's needs, his treatment, and the witnesses' testimony at hearing. As thus limited, such communications are also relevant and should be produced.

Student seeks to have the subpoena quashed on several grounds. First, he asserts that Citrus Springs has not shown the required reasonable necessity for the production, as the subpoenas themselves only cite "good cause" for the production. That language is part of the form, and not a representation drafted by Citrus Springs. In the supporting declaration, Citrus Springs notes for all of these witnesses that it needs the documents to prepare for hearing, that Student has not already produced the documents and is not likely to do so, and that it has no other means to obtain the documents. That showing constitutes reasonable necessity for their production.

Student contends that the request should not apply to any reports prepared after the filing of this case because the reports were not before the IEP team. Student is correct insofar as the reports are not relevant to the proceedings at the IEP team meeting, but they are relevant to the witnesses' testimony at hearing, especially where the witnesses are testifying as experts.

In addition, Student assets that any correspondence between the witnesses and Student and his advocate is not relevant to the ultimate issues in this case. Again, such correspondence is relevant to the witnesses' testimony, as it provides information about their bases of knowledge, their access to information, and their possible interests or biases.

Student also argues that he will produce all documents reasonably necessary to determine the facts of this matter. Citrus Springs ability to gather information to prepare its defense is not limited to using those documents Student chooses to put into evidence. Student contends his privacy and that of his Parent and Mr. Attwood are being violated by these requests. As noted above, only those communications with Parent and Mr. Attwood

that relate to Student's treatment or evaluation or to the witnesses' testimony at hearing need be produced. Thus limited, the documents requested are properly sought and must be produced.

ORDER

Student's motion to quash Citrus Springs's subpoena duces tecum is denied to all requested documents except for the request for all documents regarding communications with Student's Parent and Mr. Attwood. Only those documents relating to communications concerning Student's treatment or evaluation or to the witnesses' testimony at hearing need to be produced. The responding parties to the subpoena shall produce the documents described therein on the first day of hearing, currently set as April 9, 2019.

DATE: March 22, 2019

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings