BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA MARIA-BONITA SCHOOL DISTRICT AND SANTA MARIA JOINT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018070289 ORDER DENYING MOTION TO QUASH A SUBPOENA DUCES TECUM FOR RECORDS FROM SANTA MARIA BONITA SCHOOL DISTRICT

On October 22, 2018, Santa Maria Bonita School District filed a motion to quash a subpoena duces tecum issued by Student's attorney on October 15, 2018, seeking production of documents by its custodian of records, supported by a declaration by Santa Maria Bonita's attorney. Student filed in Opposition to the motion to quash on October 25, 2018.

APPLICABLE LAW

Subpoenas in Special Education Due Process Hearings

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)." Thus, subpoenas are available to require the production of information that is reasonably necessary in order for a party to present their case at hearing. In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in the Code of Civil Procedure. Section 1985 of that Code governs the issuance of subpoenas. In accordance with that provision, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced at hearing. Parties must also comply with the consumer protections of Code of Civil Procedure section 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services*, (1993) 17 Cal.App.4th 1072.)

Motions to Quash in Special Education Proceedings

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 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.

DISCUSSION

In his complaint, Student asserts that Santa Maria Bonita failed to assess him in all areas of suspected disability, failed to implement his individualized educational programs, failed to offer measurable goals in his IEPs, failed to make clear offers of a free appropriate public education, failed to provide appropriate speech and language services, failed to offer or provide appropriate academic instruction, and failed to offer or provide appropriate behavior supports or a behavior support plan.

In its motion to quash the subpoena duces tecum, Santa Maria Bonita argues that the subpoena be quashed because the request is overly broad, fails to demonstrate necessity or materiality, and seeks privileged documents.[1] Santa Maria Bonita argues that the SDT seeks "potentially hundreds of email exchanges, letters, personal notes, or other writings" of "marginal relevance." It contends that Student already has communications sent directly to his parents and has received copies of his student records, making production unnecessary. In addition, Santa Maria Bonita asserts that the request would include privileged communications with counsel.

Student argues that the request is not overbroad, as it is limited by its terms to communications about Student's IEP development, assessments, behavior supports, behavior incidents, and academic instruction. These are the areas at issue in this matter. Further, he notes that the request is limited to communications from the time period at issue, and that he does not seek attorney-client communications.

The production requested from Santa Maria Bonita[2] covers all communications, including "emails, text messages, recorded interviews, [and] phone messages." However,

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[1] Santa Maria Bonita also argues that there is no discovery in special education proceedings before OAH. There is no prehearing discovery in such cases, but the right to subpoena documents in a special education proceedings is a hearing right, not a prehearing discovery right. (5 Cal. Code Regs. §3082, subd. (b)(2).)

[2] Santa Maria Bonita contends that this subpoena is duplicative of the one served upon the Santa Maria Joint Unified High School District. It is not improper to serve similar subpoenas upon separate entities. To the extent that the entities jointly maintain these records or the required productions are duplicative, the entities may coordinate their

Santa Maria Bonita is incorrect in concluding that the SDT is overly broad, as Student does not seek, as it contends, "any and all communications made 'by any employee, related to' " Student at any time. The subpoena explicitly limits the request to communications made after July 6, 2016, which are related to Student's IEP development, assessments, behavior supports, behavior incidents, and academic instruction. The subpoena excludes Student's educational records previously provided to him, and may include communications made to his parents. Student has disclaimed in his Opposition any intent to seek privileged communications between Santa Maria Bonita and its counsel. Should Santa Maria Bonita be uncertain whether a particular communication is covered by the privilege, it should note the communication in a privilege log.

No authority supports Santa Maria Bonita's contention that it need only produce to Student the documents it intends to present at hearing. Santa Maria Bonita must make a responsive production to Student's SDT at the start of the hearing of this matter.

ORDER

Santa Maria Bonita's motion to quash the subpoena duces tecum for records is denied. Santa Maria Bonita shall produce the requested records at the location of the hearing at the commencement of the hearing, currently set for November 6, 2018.

IT IS SO ORDERED

DATE: October 30, 2018

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

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productions to eliminate redundancy.