BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018080489 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

On August 29, 2018, Los Angeles Unified School District filed a motion to quash a subpoena duces tecum issued by Student's attorney. Student has not filed a response.

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. The good cause requirement is met by a factual showing of why the requested documents or things are material and relevant to the litigated issues. (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.) 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 California Civil Code. California Civil Code section 1985 governs the issuance of subpoenas. In accordance with the California Civil Code, 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. Parties must also comply with the consumer protections of California Civil Code 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services*, (1993) 17 Ca. 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

Student's attorney issued a subpoena duces tecum on August 15, 2018, which was served on Los Angeles asking that Claudia Ruiz appear in person on the first day set for hearing in this matter, October 4, 2018, or in the alternative produce requested documents on August 23, 2018. Student is requesting "incident report(s) from April 5, 2018 taken by administrative personnel including all staff members at Glenwood Elementary School and Los Angeles Unified School District regarding injuries sustained by student including but not limited to witness statement(s), nurse's report, administrative report(s) (names may be redacted to protect privacy)." Student further asks for the production of documents pursuant to the Federal Rules of Civil Procedure, Rule 34 and Rule 26 in the declaration attached to the subpoena duces tecum. However, the declaration does not state why the reports are necessary and relevant to the issues in this case.

Los Angeles asks that the subpoena duces tecum be quashed because Student is asking for records to be produced before the date of hearing, and there is no prehearing discovery in special education due process hearings. Instead parties are required to produce documents they intend to introduce at hearing and provide them to the other party five business days prior to hearing. (Ed. Code § 56505, subd. (e)(7).) In addition Los Angeles asks that the subpoena duces tecum be quashed because Student does not show "reasonable necessity" for the documents. Finally, Los Angeles claims that the documents requested are subject to attorney client privilege. A declaration from Los Angeles's attorney is attached, as is a copy of the subpoena duces tecum, and two nurse's reports dated April 5, 2018, which were previously provided to Parent and Student's attorney.

Los Angeles is correct in its assertion that there is no prehearing discovery in special education due process hearings. Further, Student does not show "reasonable necessity" for the requested documents in either the subpoena duces tecum itself, or the attached declaration. OAH proceedings are not subject to the Federal Rules of Civil Procedure, unless OAH is a party to a matter filed in federal court, which is not the case here.

It should be noted that there is no evidence, based on the declaration by Los Angeles's attorney, that the requested reports beyond the nurse's reports even exist, nor any showing that if they do, they are protected by attorney client privilege. The motion to quash the subpoena duces tecum is granted on the basis that Student is requesting prehearing discovery and no such right exists in special education due process cases, and also because

Student makes no showing of reasonable necessity in the declaration attached to the subpoena duces tecum.

ORDER

Los Angeles's motion to quash the subpoena duces tecum issued by Student's attorney on August 15, 2018, is **GRANTED.**

DATE: September 13, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings