BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018110245 ORDER GRANTING WITHOUT PREJUDICE STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM

On January 15, 2019, Student filed a motion to quash Antioch's subpoena duces tecum seeking records from the Sequoia Village Schoolhouse. Student challenged Antioch's subpoena duces tecum on the following grounds: 1) subpoena is deficient as it requests a direct production of documents to be provided to directly to counsel; 2) the subpoena is overly broad; 3) Antioch fails to make an adequate factual showing; 4) equity demands the subpoena duces tecum be quashed.

On January 18, 2019, Antioch filed an opposition to Student's motion to quash. As grounds for its opposition: 1) Antioch contends that the subpoena was validly issued; 2) not overly broad and seeks information reasonably necessary for Antioch's case; 3) equity is not grounds to quash the subpoena.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act has the right 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); see also Ed. Code, § 56505, subd. (e).)

In special education proceedings in California, "[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)." (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) This requirement mirrors that required by Code of Civil Procedure section 1985, subdivision (b) (Section 1985(b)), which requires:

> A copy of an affidavit shall be served with a subpoena duces tecum . . ., showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the

case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.

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.)

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

Deficiencies of the Subpoena

Student contends that the subpoena is deficient in that it does not seek an appearance of a specific party who may be ordered to appear and bring with them specific documents. Rather, Student argues, the subpoena is overly broad as it seeks to a direct production of documents of all possible records.

In response, Antioch argues, the subpoena was properly issued as both Student and Antioch have identified Sarah Oletti, the executive director of the Sequoia Village Schoolhouse as a percipient witness on their prehearing conference statements. However, Antioch only directed its subpoena to the "Custodian of Records," and not Ms. Oletti. In its opposition, Antioch argues, Ms. Oletti, "may very well be the custodian of records." This is a significant deficiency in Antioch's subpoena as Antioch did not request a specific witness appear with documents to testify.

Antioch argues it is readily apparent the parties intended Ms. Oletti's "appearance and testimony about the subject matter set forth in the SDT." Antioch argues, Student is trying to have it both ways, relying on Ms. Oletti's testimony, but also seeking to prevent Antioch from obtaining the necessary documentation to properly cross examine her during the hearing. In further support of its argument, Antioch provides a citation to an OAH order in case 2017010608, where upon review of the case, it was discovered no subpoena, much less an order regarding a subpoena was ever issued in the stated case. Antioch had an opportunity to subpoena Ms. Oletti to appear, and failed to do so.

Antioch also failed to make a requisite showing of reasonable necessity with regard to the each of the category of documents sought by its subpoena. Antioch's request of "all educational documents" related to Student from the 2016-2017, 2017-2018, and 2018-2019 school years "including but not limited to attendance records, enrollment records, emergency contact information, proof of residency, special education assessments, completed testing protocols and/or rating scales, individualized education programs, Section

504 plans and meeting notes; behavior plans; behavior contracts, standardized testing scores (e.g. i-Ready scores, DIBEL scores, SBAC/CASASPP results, etc.); progress reports; and report cards."

Antioch's request for production of "all education records" is overbroad in relation to Antioch's declared need to establish "Student's needs and progress before, after, and during" the time Student was receiving special education and related services from Antioch. Antioch has not provided any information to indicate a reason to believe specific items, i.e. Section 504 plans and meeting notes exist. Antioch's declaration in support of the subpoena fails to establish that Antioch is not able to obtain the documents without recourse to a subpoena. Antioch obtained a signed release from Parents on January 8, 2019, after issuing its SDT. In its current form, Antioch's SDT constitutes prehearing discovery.

ORDER

1. Student's motion to quash is granted without prejudice to the entire subpoena for failure to direct production of the requested documentation to a specific party who may be ordered to appear and bring specific documentation with them.

2. Student's motion to quash is granted without prejudice to the entire subpoena on the grounds the subpoena is overly broad.

3. Student's motion to quash is granted without prejudice to the entire subpoena on the basis the subpoena fails make a requisite showing of reasonable necessity.

4. Student motion to quash is granted without prejudice to the entire subpoena on the basis the subpoena, in its current form, constitutes prehearing discovery.

DATE: January 23, 2019

DocuSigned by:
Tiffany Gilmartin
71D0D50BAEB74A1...

TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings