BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2013100405
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2013101109 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM TO FALCON RIDGE RANCH

These consolidated matters are set for a due process hearing beginning on February 25, 2014.

On February 7, 2014, Student filed a motion to quash the Sacramento City Unified School District's (District's) subpoena duces tecum (SDT) for records from the Falcon Ridge Ranch residential treatment facility in the State of Utah. On February 12, 2014, District filed an opposition. The SDT seeks to compel the production of records pertaining to Student, and District served Student's attorney with the requisite consumer notice. Production is required either at hearing on February 25, 2014, or to Student's attorney by February 21, 2014.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities Education Improvement Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).) California Code of Regulations, title 5, section 3082, subdivision (c)(2) sets forth the right of the parties in a special education hearing to compel the attendance of witnesses. It provides in pertinent part that, "[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)." California Code of Regulations, title 5, section 3089, specifies that the subpoena provisions of the Administrative Procedure Act (APA),

found in California Government Code sections 11450.05 to 11450.30, do not apply in special education due process hearing matters. Special education law does not specifically address whether an SDT may be issued by an attorney, or whether or how an SDT may be quashed.

Since special education law is silent on these topics, and the APA does not directly apply, OAH looks to the relevant portions of the APA and the California Code of Civil Procedure as guidance. Code of Civil Procedure, section 1985, subdivision (c) provides that an attorney of record in an action may sign and issue a SDT to require production of the matters or things described in the subpoena. Code of Civil Procedure, section 1985.3 provides that anyone who seeks to obtain personal records pertaining to a consumer in connection with a civil action or proceeding must take certain steps to notify the consumer that his or her personal records are being sought, including personal information held by a local governmental agency. (Code Civil Proc., § 1985.4.) A party subpoenaing confidential third party records in an administrative proceeding must comply with the notice protections of section 1985.3. (*Sehlmeyer v. Dept. of General Services* (1993) 17 Cal.App.4th 1072.) In ruling on a motion to quash a subpoena or SDT, OAH also relies by analogy on the relevant portions of Code of Civil Procedure. Section 1987.1 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.

A party does not have the right to use a subpoena or SDT to compel the production of documents prior to a special education due process hearing. In general, there is no right to prehearing discovery in these proceedings. The applicable statutes and regulations securing the rights to present evidence and compel the attendance of witnesses generally relate to the hearing itself. 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).) Similarly, California law extends the rights to present evidence and compel the attendance of witnesses to "[a] party to a hearing held pursuant to this section ..." (Ed. Code, § 56505, subd. (e).) 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 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 SDTs.

DISCUSSION

Student's motion to quash is based on four grounds: she claims District's SDT is not valid in Utah; it is vague, overly broad, and seeks documents not relevant to the issues; the SDT constitutes prehearing discovery; and it does not contain a showing of reasonable necessity. District's SDT seeks "any and all" records pertaining to Student, accompanied by a list of specified categories "including but not limited to" the facility's records of her application, special education records, grades, assessments, reports, and correspondence, including emails with Parents and Student's attorneys. District asserts that Student does not have standing to make the motion.

Under Code of Civil Procedure section 1985.3, subdivision (a)(1), Falcon Ridge Ranch qualifies as a "private school" and therefore a "witness" within the scope of the requirements for consumer notice. It is clear that Student's records under the control of Falcon Ridge Ranch are the only records sought by District and District provided consumer notice. District has not sought production of the center's general records aside from those pertaining to Student and she therefore has standing to raise the objection directly related to her records.

Student intends to call several witnesses from Falcon Ridge Ranch to testify at hearing. In addition, the documents on District's SDT list appears to be relevant to the hearing. Whether District has established the requisite "reasonable necessity" for the SDT need not be decided based on the following.

Falcon Ridge Ranch has not filed any objection to the SDT. It is a residential treatment facility located in Utah. Student's attorney does not represent that facility. However, District has not submitted any legal authority to support its asserted claim of a power to compel a company that does not do business in California to comply with an SDT issued in a California special education due process matter. In addition, District has not submitted any legal authority that it is entitled to receive the requested documents before the hearing.

The regulations governing this proceeding specifically disallow the provisions of the APA that provide broader authority for the use of subpoenas in other administrative hearings. Although the OAH subpoena form has options for production of the records under subpoena, including prehearing production, not all of them may apply to special education matters. While SDT's are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Parents have the right to request and receive the pupil's educational records. ((Ed. Code § 56504).) Additionally, the parties are entitled to receive copies of all the documents they intend to use at hearing, not less than five business days prior to the hearing. (Ed. Code § 56505, subd. (e)(7).) These required disclosures are the basic mechanisms by which a party may obtain documentary information from another party prior to hearing. Therefore, District's SDT for production prior to hearing is invalid.

In terms of distance, Government Code section 11450 of the APA, subdivision (b), provides, as guidance, that the administrative subpoena process extends to all parts of the State. That section references, and is consistent with Code of Civil Procedure section 1989, requiring residency in California to effectuate a subpoena. As noted above, District has not provided any legal authority for extending the reach of a California administrative SDT to Utah.

District has not established that its SDT can legally reach companies in Utah. Accordingly, Student's motion to quash the SDT is granted on that basis. This order does not prevent Falcon Ridge Ranch from voluntarily agreeing to produce requested records.

DATE: February 21, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings