BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LAFAYETTE SCHOOL DISTRICT.	OAH Case No. 2017031065 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

This matter was previously set for hearing on May 16, 2017.

On May 1, 2017, Student moved to quash a subpoena duces tecum served on April 6, 2017, by Lafayette on Christopher Harris, Director of the Esther B. Clark School in Palo Alto. On May 4, 2017, Lafayette filed an opposition to the motion.

On May 4, 2017, the hearing was continued to August 29, 2017.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education 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).) The hearing officer in a special education due process hearing may issue subpoenas or subpoenas duces tecum (SDTs) upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit.5, § 3082, subd. (c)(2).) However, special education law does not specifically address motions to quash subpoenas or SDTs. In ruling on such motions, OAH relies by analogy on the relevant portions of the California Code of Civil Procedure. Section 1987.1 of that code 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.

California law provides that parents may before a hearing obtain pupil records under Education Code section 56504 and related statutes, and are also entitled to receive, five business days before the hearing, copies of all the documents the district intends to use at the hearing, and a list of all witnesses the district intends to call, with a statement of the general areas of their expected testimony. (Ed. Code, § 56505, subd. (e)(7).) However, a party does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulation securing the rights to present evidence and compel the attendance of witnesses all 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).) Both of those subsections relate only to due process hearings, not to any prehearing procedures.

Similarly, California law extends the rights to present evidence and compel the attendance of witnesses only to "[a] party to a hearing held pursuant to this section ..." (Ed. Code, § 56505, subd. (e).) That section of the Education Code only addresses the rights of parties during a due process hearing. 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 Board 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 for return at hearings.

Accordingly, OAH has repeatedly ruled that a party to a special education due process matter lacks the right to compel production of documents outside this statutory and regulatory scheme. (See, e.g., *Student v. Oakland Unified Sch. Dist.* (OAH, Oct. 1, 2013, No. 2013070215)((Order Granting Motion to Quash Subpoena Duces Tecum) and decisions cited.).

DISCUSSION

On April 6, 2017, Lafayette served on the Esther B. Clark School in Palo Alto a subpoena duces tecum, on an OAH form, requiring him either to appear at the hearing then set for May 16, 2017, or to produce certain records pertaining to Student, accompanied by a custodian of records affidavit, to Lafayette's counsel in his office by May 8, 2017,. (See Evid. Code, § 1561.) Student moved to quash the subpoena, relying on the principle set forth above that the IDEA does not provide for the use of a subpoena duces tecum for prehearing discovery.

In its opposition to the motion to quash, Lafayette essentially conceded that prehearing discovery by means of subpoena duces tecum is improper, but requested in the alternative that OAH modify the subpoena so that it requires production of records only at hearing.

OAH declines to modify the subpoena for two reasons. First, in its current form, it allows Mr. Harris to choose between appearing at hearing (Box 2 is checked) and sending documents to counsel (Box 4 is checked), but does not require him to bring documents to the hearing if he chooses to testify. (Box 5 is unchecked.) So simply deleting the option for early production does not appear to accomplish Lafayette's purpose.

Second, the declaration accompanying the subpoena does not show reasonable necessity for the production of records as required by subdivision (c)(2) of section 3082 of Title 5 of the California Code of Regulations. It merely claims that the records sought are "relevant" and "highly relevant," which does not constitute a showing of reasonable necessity.

The subpoena duces tecum served on Mr. Harris on April 6, 2017, is quashed without prejudice to the service and enforcement of a later subpoena that complies with applicable legal standards.

IT IS SO ORDERED.

DATE: May 16, 2017

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings