BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017110183 ORDER GRANTING WITHOUT PREJUDICE MOTION TO QUASH SUBPOENA DUCES TECUM

Parents on behalf of Student filed a request for due process with the Office of Administrative Hearings on October 31, 2017, naming San Dieguito Union High School District.

On March 15, 2018, District's attorney sent by electronic mail a subpoena duces tecum to Student's attorney. The subpoena directs Student's expert, Jill Weckerly Ph.D., to produce all testing materials, including protocols and reports, used to assess Student; and all correspondence, email and written, between Parents and Dr. Weckerly. The subpoena directs Dr. Weckerly to mail the records by March 27, 2018, to District's attorney's office located at 4275 Executive Square, Suite 700, La Jolla CA, 92037-1477.

On March 23, 2018, Student filed a motion to quash the subpoena duces tecum, regarding the correspondence between Parents and Dr. Weckerly. Student does not object to producing Dr. Weckerly's assessment and testing protocols. Student's motion is based on the following grounds: 1) District failed to demonstrate good cause for the records by setting forth facts showing why the records are material or relevant to this matter; 2) the subpoena is procedurally defective because it failed to specify when and where Dr. Weckerly is to appear in person to produce the documents; and 3) the subpoena included an address where the records could be mailed that is different than the address provided in District's notice of representation, and Student has not been notified of a change of address for District's counsel. District did not submit an opposition to Student's motion.

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.

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (20 U.S.C. § 1400 et seq.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

DISCUSSION

Failure to Have Subpoena Returnable at an Appropriate Place and Time

District's subpoena duces tecum is returnable on March 27, 2018, to District's attorney's office. On March 16, 2018, OAH convened a prehearing conference and granted Districts request, in part, to continue this matter. Per the Prehearing Conference Order, the hearing was set to begin on March 29, 2018, at District's office located at 710 Encinitas Blvd., Encinitas, CA 92024. District failed to re-issue its subpoena duces tecum following

the prehearing conference and therefore the present subpoena improperly requests records prior to the commencement of the hearing. By the above authority, District has no statutory right to prehearing discovery. District's subpoena duces tecum should have been returnable on the first day of hearing, and the location for production should have been the hearing venue. The subpoena duces tecum is quashed on these grounds.

Relevancy or Reasonable Necessity of the Records

Student argues that the subpoena duces tecum should be quashed because District failed to make the requisite showing of reasonably necessity for the requested documents. Student is correct in this assertion, as District's subpoena duces tecum failed to include any facts to show that the requested records are necessary or relevant for this matter. Consequently, Student's motion to quash is granted on this ground as well.

ORDER

Student's motion to quash District's subpoena duces tecum is granted without prejudice.

DATE: March 26, 2018

DocuSigned by:
Paul Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings