BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060459 ORDER DENYING STUDENT'S MOTION TO QUASH SUBPOENA RE ERIC WILLIAMS

On June 9, 2017, Student filed a Request for Due Process Hearing naming Berkeley Unified School District. On September 11, 2017, Student filed a Motion to Quash a subpoena from District seeking the production of records and testimony at hearing by Eric Williams. A copy of the subpoena at issue was filed with OAH on September 8, 2017. According to the subpoena, Mr. Williams is believed to possess knowledge and/or documents related to Student's residency in November-December 2016 and March 2017 during her detention at the San Leandro Juvenile Justice Center. Student's residency during that period of time is an issue in the due process hearing.

On September 12, 2017, District filed an Opposition to Student's Motion to Quash, withdrawing the request for production of documents by Mr. Williams and seeking only his testimony at hearing. On September 12, 2017, Student filed a Reply to District's Opposition reiterating Student's opposition to Mr. Williams' testimony at hearing because District had not established reasonable necessity for his testimony.

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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) and (3).) A parent may obtain his or her child's educational records (Ed. Code § 56504), and parents are entitled to receive copies of all the documents a district intends to use at hearings no less than five days prior to the hearing (Ed. Code § 56505, subd. (e)(7).).

California Code of Regulations, title 5, section 3082, subdivision (c)(2) gives parties to a due process hearing the right to compel witnesses to attend the hearing, and to testify and produce documents at the hearing. In pertinent part, it provides 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." This requires a showing that the requested documents are reasonably necessary for the requesting party to present a case at hearing. This standard is stricter than the general standard of "good cause" in the Administrative Procedures Act for issuance of subpoenas duces tecum, adopted from Code of Civil Procedure, which states that:

> 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.

(Code of Civ. Proc., § 1985, subd. (b) [adopted into the APA at Gov. Code § 11450.20, subd. (a)].) 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 whether a subpoena may be issued by an attorney, or whether or how a subpoena duces tecum may be quashed; however, relevant provisions of the California Code of Civil Procedure provide guidance. Code of Civil Procedure, section 1985, subdivision (c) provides that an attorney of record in an action may sign and issue a subpoena to require production of the matters or things described in the subpoena. California 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.

ANALYSIS

District withdrew the subpoena duces tecum as to the production of documents by Mr. Williams at hearing. District seeks testimony from Mr. Williams regarding his knowledge of Student's residency within the District during the time period at issue in the due process hearing. Student argues that Mr. Williams' testimony has not been shown to be reasonably necessary at hearing. Student's complaint alleges District denied Student a free appropriate public education from November 2015 to June 2017. Whether Student was a resident of District during the time period alleged in Student's complaint is material to the issues in this case. Accordingly, the testimony of Mr. Williams is reasonably necessary to District's case at hearing.

Student's Motion to Quash the subpoena duces tecum as to production of documents is moot. Student's Motion to Quash District's subpoena for Mr. Williams' testimony at hearing is denied.

IT IS SO ORDERED

DATE: September 18, 2017

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings