BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014010263 ORDER GRANTING DISTRICT'S MOTION TO QUASH SUBPOENA DUCES TECUM

On February 25, 2014, Oakland Unified School District (District) filed a motion to quash a subpoena duces tecum served upon it by Student's counsel. Student did not file a response to the motion.

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 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 (SDT) (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 SDT's. In ruling on such motions, the 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.

Parents may request copies of their child's educational records at any time, and are entitled to receive those copies within five business days of their request. (Ed. Code, § 56504.) Education records under the IDEA are defined by the Federal Education Records Privacy Act (FERPA) to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b).)

In addition to parents' right to copies of educational records within five business days of a request in California, a party to a due process proceeding is entitled to be served, five business days before the hearing, with copies of all the documents the other party or parties intend to use at the hearing, and a list of all witnesses intended to be called with a statement of the general areas of their expected testimony. (Ed. Code, § 56505, subd. (e)(7).)

DISCUSSION AND ORDER

District has attached to its motion a copy of the subpoena duces tecum Student served upon it on February 20, 2014. The subpoena duces tecum calls for the requested records to be disclosed on February 25, 2014. District is asking that the subpoena duces tecum be quashed for two reasons. First, District correctly argues that special education law does not contain any provisions authorizing pre-hearing discovery. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits at least five business days prior to the hearing, but this provision requires a party to disclose witnesses and exhibits it intends to use during the due process hearing, not every single record in its possession. If Student requires specific records, a subpoena duces tecum can be used to compel the production of records on the day the hearing is to commence. At the time Student issued the subpoena duces tecum, the hearing was set to begin on March 4, 2014. Because prehearing discovery is not allowed, the subpoena duces tecum must be quashed.

District also claims that the subpoena duces tecum is defective "because it fails to make a showing of reasonable necessity for the requested records." In the section of the subpoena duces tecum that calls for the party making the request to demonstrate good cause for the requested records, counsel for Student simply states that the requested items "are

material to the proper presentation of this case, and good cause exists for their production by reason of the following facts[.]" Student's counsel then lists the types of records she wishes to have produced, but gives no specific reason as to why they are necessary and relevant. The subpoena duces tecum is therefore defective because there is no specific showing of why Student needs the records at hearing. Further, to the extent that some of the requested records are Student's educational records, pursuant to FERPA and the Education Code, they can be requested from District at any time pursuant to Education Code section 56504. When such a request is made, the records must then be produced no later than five business days after the request is made.

Some of the records requested do not appear to be the type of educational records contemplated by FERPA and Education Code section 56504. Student is asking for "all internal records of Oakland Unified School District of any conversations, emails, correspondence, and any and all other communications by and between [District] employees . . . regarding Student." Because some of these requested records may not be "educational records," a subpoena duces tecum asking for production on the day the hearing commences would be proper, were the statement of good cause properly made, with a showing as to why the records were necessary, assuming there was no other legal bar to production. However, because the declaration is defective, the subpoena duces tecum must also be quashed on grounds that it is defective.

District's motion to quash the subpoena duces tecum issued by Student's counsel on February 20, 2014, is granted.

IT IS SO ORDERED.

DATE: April 1, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings