BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021050320

ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

JUNE 17, 2021

On May 11, 2021, Parent on behalf of Student filed a request for due process hearing naming Compton Unified School District, referred to as Compton. On May 12, 2021, OAH issued the initial Scheduling Order and set the due process hearing for July 7, 2021 through July 8, 2021.

On June 2, 2021, Student issued a subpoena duces tecum to the Custodian of Records of Compton. The June 2, 2021 subpoena duces tecum is referred to as the subpoena. The subpoena was for the production of records only and did not request the Custodian of Records to appear as a witness at the due process hearing scheduled at the time for July 7, 2021 through July 8, 2021.

Compton filed a Motion to Quash Subpoena Duces Tecum on June 10, 2021.on multiple grounds, including: (1) the subpoena was overbroad and sought documents beyond the scope of Student's education records; and (2) the subpoena required production of documents prior to the start of the due process hearing.

Student filed an Opposition to Motion to Quash on June 17, 2021. Student argued primarily that the records sought are educational records and are reasonably necessary to understand the issues raised in the due process complaint.

On June 11, 2021, Student filed a Motion to Amend and amended complaint with OAH. Compton filed a statement of Non-Opposition on June 11, 2021. OAH issued an Order Granting Motion to Amend Complaint on June 14, 2021, and rescheduled the due process hearing for August 10, 2021, through August 12, 2021.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities Education Act, referred to as 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 (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), 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 the Code of Civil Procedure. 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.

NO RIGHT TO PREHEARING DISCOVERY

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. (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.

Education Code, 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 by section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Pre-hearing discovery in special education cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District,* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

FAILURE TO HAVE SUBPOENA DUCES TECUM RETURNABLE AT THE START OF HEARING

Student spends considerable time in their opposition brief addressing issues not raised in Compton's Motion to Quash. Student does not address Compton's contention that the subpoena is invalid because it is returnable to Student's attorney prior to the scheduled start of the hearing. Student's subpoena directs the Custodian of Records to produce the documents to Student's attorney Erica Shubin no later than June 17, 2021,

which is prior to the originally scheduled hearing dates of July 7, 2021 through July 8, 2021.

A party to a due process hearing does not have the power to use a subpoena duces tecum to compel the production of documents before hearing. The applicable statutes and regulations securing the right to present evidence and compel the attendance of witnesses all relate to the hearing itself. Student's subpoena is invalid on its face as it was not returnable on the first day of hearing.

STUDENT DID NOT SHOW REASONABLE NECESSITY FOR THE RECORDS

The subpoena fails to make the requisite showing of reasonable necessity for the requested documents with a statement of facts showing the material and relevant information sought. Student did not comply with the requirement that the subpoena be accompanied by a declaration establishing reasonable necessity for production of the records. Here, Student made no material statement of the basis for the need for the records, other than a general, conclusory statement that the documents are "relevant" to the allegations and causes of action. Student's declaration fails to establish with specificity why the documents subpoenaed are material and relevant.

In its opposition brief, Student argues that there is no authority for the proposition that educational records can only be produced on the first day of hearing. Student confuses a school district's obligation to produce educational records within five business days after the request is made by a parent, with the ability to compel production of documents at a due process hearing through the use of a subpoena duces tecum. Although a student's education records can be requested by a student from a school district at any time pursuant to Education Code section 56504, there is no authority which permits a student to compel prehearing production of education or

other records through the subpoena process as attempted here by Student. To find otherwise would vitiate the rule against pre-hearing discovery. If Student believes there are educational records which have not been timely provided to Parent by Compton, Student may issue and serve a subpoena duces tecum in accordance with OAH's guidelines returnable for the first day of hearing.

STUDENT'S SUBPOENA DUCES TECUM DOES NOT COMPLY WITH OAH'S REQUIREMENTS

Student's subpoena duces tecum also fails to comply with OAH's requirements for issuance of subpoenas duces tecum. The proper subpoena form and instructions for service are located on OAH's website. Student neglected to use OAH's form subpoena; attach OAH's instructions for responding to subpoenas duces tecum by uploading documents to CaseLines; nor file a copy of the subpoena with OAH. Should Student reissue a subpoena duces tecum, they are advised to follow OAH's guidelines.

Student failed to comply with the procedural requirements in issuing the subpoena, and therefore the subpoena is quashed. This Order does not address the substantive issue of whether the documents requested were overbroad.

While section 1987.1 of the Code of Civil Procedure, provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it; as no good cause for production of the records has been established, here the subpoena duces tecum cannot be modified.

Accordingly, Compton's Motion to Quash is granted.

ORDER

1. Compton's Motion to Quash is granted.
2. This Order is made without prejudice to Student issuing a renewed subpoena duces tecum for production of documents at the hearing.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings