BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of:<br><br>SAN MARCOS UNIFIED SCHOOL DISTRICT,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT. | OAH Case No. 2017120623<br><br>ORDER GRANTING WITHOUT PREJUDICE STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM |

San Marcos Unified School District filed a request for due process with the Office of Administrative Hearings on December 14, 2017. The Due Process hearing began on March 20, 2018. It was continued to April 10, 2018 at the conclusion of testimony on March 23, 2018.

On March 26, 2018, San Marcos' attorney served a subpoena duces tecum on the custodian of records of California Coast Academy. The subpoena directs California Coast Academy to produce all educational records held by California Coast Academy regarding Student, specifically: "Enrollment and application records, aide support records, behavior records, assessment and evaluation reports, progress reports, special education documents, IEPs, goals and objectives, test protocols, communication logs, speech therapy records, occupational therapy records, correspondence and emails, contracts for service, and billing records relating to Student from April 1, 2017 to the present." The subpoena directs California Coast Academy to produce the records to San Marcos' attorney's office.

On April 5, 2018, Student filed a Motion to Quash the subpoena duces tecum regarding the requested educational records on the grounds the request is overly broad and seeks records not relevant to the sole issue in dispute, and good cause was not established to support production.

On April 9, 2018, San Marcos filed an opposition to Student's Motion to Quash on the grounds the Student records San Marcos requested from California Coast Academy are relevant to the instant case, San Marcos established reasonable necessity for the requested records, and the request is not overly broad.

## 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

San Marcos seeks records relating to Student's placement at California Coast Academy. The basis San Marcos provides is to "rebut any allegations made by Parents that District's IEP does not provide a FAPE because it does not include placement at a school like Cal Coast Academy." Student argues San Marcos' request does not establish good cause to support their production.

There is currently no Student filed matter pending before OAH. The sole issue currently being heard before OAH is "[w]hether Student's April 27, 2017 individualized education program, as modified on November 3, 2017, offers her a free appropriate public education in the least restrictive environment."

At this juncture Student has made no allegations that San Marcos' IEP does not provide a FAPE because it does not include placement at a school like California Coast. San Marcos' sole reason for seeking the California Coast Academy records was to rebut an issue not pending before OAH. San Marcos has made no factual showing as to why the California Coast Academy education records are relevant to the instant issue.

## ORDER

Student's Motion to Quash San Marcos' subpoena duces tecum is granted without prejudice.

DATE: April 10, 2018

DocuSigned by:
Tiffany Gilmartin
71D0D50BAEB74A1...

TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings