BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017020375 ORDER QUASHING SUBPOENA DUCES TECUM

On February 8, 2017, Parent on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings, naming San Diego Unified School District. This matter is set for a prehearing conference for March 27, 2017, and hearing on April 4, 2017.

On February 28, 2017, Student served a Subpoena Duces Tecum on District, which requested that records from District employees be provided to Student by March 13, 2017. Also on February 28, 2017, District submitted an email to Student and OAH, requesting clarification regarding the Subpoena Duces Tecum.

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 at the hearing. (20 U.S.C §1415(h)(2); Ed. Code, § 56505, subds. (e)(2) and (3).) There is, however, no right to pre-hearing discovery under the IDEA. A parent may obtain his/her child's educational records. (Ed. Code § 56504).) Additionally, parents are entitled to receive copies of all the documents the District intends to use at hearing, no less than five days prior to the hearing. (Ed. Code § 56505, subd. (e)(7).)

The provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal Code Regs., tit. 5, § 3089.) Subdivision (c)(2) of section 3082 of title 5 of the California Code of Regulations provides in pertinent part that 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)."

Special education law does not specifically address motions to quash subpoenas or Subpoena Duces Tecums. In ruling on such motions, the OAH relies by analogy on the

relevant portions of California 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.

DISCUSSION

Student's Subpoena Duces Tecum requests various documents relating to Student, and that the documents be produced to Student's representative by March 13, 2017. Student's Subpoena Duces Tecum therefore requests the production of documents before hearing. However, applicable Federal and California statutes and regulations do not provide for prehearing discovery in special education proceedings. Accordingly, Student's Subpoena Duces Tecum is quashed, sua sponte, because it constitutes prohibited prehearing discovery.[1]

ORDER

Student's Subpoena Duces Tecum is quashed.

DATE: March 06, 2017

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

[1] This order does not prevent Student from re-issuing a Subpoena Duces Tecum, or impact Student's Public Records Act Request.