BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018070437
IRVINE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018070050 ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUMS

On June 28, 2018, Irvine Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2018070050 (Irvine's Case), naming Parent on behalf of Student. On July 10, 2018, Student filed a Request for Due Process Hearing in OAH case number 2018070437 (Student's Case), naming Irvine. On July 12, 2018, OAH granted Student's request to consolidate Student's Case with Irvine's Case. On August 23, 2018, OAH granted the parties' joint request to continue the consolidated matter. On October 25, OAH granted Student's request to amend his complaint, which reset the hearing dates. On December 5, 2018, OAH granted the parties' second request to continue this matter and set the hearing on dates selected by the parties. On February 22, 2019, OAH convened a prehearing conference for this matter.

On February 20, 2019, Irvine, through its attorney, served Student's attorney a notice to consumer and a courtesy copy of subpoena's Irvine intended to serve subpoenas duces tecums on Student's experts Dr. Robin Morris, Dr. Chris Davidsons, Dr. Bea Braun, and the agency Launchpad Therapy for Kids.

Student filed a motion to quash the subpoenas on March 7, 2019, based upon various grounds. Irvine filed an opposition on March 11, 2019.

APPLICABLE LAW

Subpoenas in Special Education Due Process Hearings

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)." Thus, subpoenas are available to require the production of information that is reasonably necessary in order for a party to present their case at hearing. In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in the Code of Civil Procedure. Section 1985 of that Code governs the issuance of subpoenas. In accordance with that provision, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced at hearing. Parties must also comply with the consumer protections of Code of Civil Procedure section 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services*, (1993) 17 Cal.App.4th 1072.)

Motions to Quash in Special Education Proceedings

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.

DISCUSSION

The prehearing conference for this matter was convened on February 22, 2019, following the issuance of Irvine's subpoenas duces tecums. During the prehearing conference, Student's attorney failed to state an intent to file a motion to quash. While Student's motion included a declaration by Student's attorney, it failed to substantiate why Student's attorney failed to indicate her intent to file the motion during the prehearing conference or why the motion was not filed prior to the prehearing conference. Therefore, Student's motion is denied for being untimely.

In addition, Student lacks standing to act on behalf of Student's experts. Student was not the party to whom the subpoenas were directed and Student's motion fails to include a declaration from Dr. Morris, Dr. Davidson, Dr. Braun, or anyone on behalf of Launchpad

Therapy for Kids. Nor has any of the subpoenaed parties filed a motion to quash. Consequently, Student's motion is denied for lack of standing.

Finally, Student's arguments that the subpoenas should be quashed because they were untimely served, that Irvine failed to make the requisite showing of reasonable necessity, and because the requested documents are immaterial, were not persuasive. Irvine issued the subpoenas on February 20, 2019, a reasonable period of time prior to the March 12, 2019 hearing. The requested documents are related to the issues in the case, including Irvine's offer of a free appropriate public education from May 2017 to October 2018. Student has identified Dr. Davidson, Dr. Braun, and Dr. Morris, as experts for this matter and Irvine is entitled to seek information that will assist it in examining those witnesses. Student is seeking reimbursement for services from Launchpad Therapy, and Irvine is entitled to seek information regarding that remedy.

ORDER

1. Student's motion to quash is denied.

2. Dr. Morris, Dr. Davidson, Dr. Braun, and Launchpad Therapy for Kids shall deliver the subpoenaed records to Irvine's Learning Center, located at 3387 Barranca Parkway, Room Four, Irvine, CA 92606, by 9:30 a.m. on March 12, 2019. Failure to do so may result in the exclusion of related witness testimony or other sanctions.

3. Student shall immediately serve Dr. Morris, Dr. Davidson Dr. Braun, and Launchpad Therapy for Kids with a copy of this order upon receipt of this order.

DATE: March 11, 2019

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