

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015120015

ORDER GRANTING DISTRICT'S
MOTION TO QUASH STUDENT'S
SUBPOENA DUCES TECUM

On March 1, 2016, Oceanside Unified School District filed a motion to quash Student's subpoena duces tecum.¹ On March 4, 2016, Student filed an opposition.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445 (*J.W. v. Fresno*); *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.)

To guarantee parents the ability to make informed decisions about their child's education, the IDEA grants parents of a child with a disability the right to examine all relevant records relating to their child's “identification, evaluation and educational placement.” (20 U.S.C. §1415(b)(1).) Parents may request copies of their child's educational

¹ In accordance with the prehearing conference order dated February 29, 2016, District's motion included a declaration of District's counsel stating that the subpoena duces tecum was received one business day prior to PHC, and established good cause as to why the motion was not made prior to the PHC.

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 Family Educational Rights and 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).)

A party to a due process hearing under the 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 of Regs., tit. 5, § 3082, subd. (c)(2).) This condition mirrors the requirement in Code of Civil Procedure section 1985, subdivision (b), which states:

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 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) 107 Cal.App.2d 75, 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.

DISCUSSION AND ORDER

On November 30, 2015, Student filed a due process hearing request alleging that District denied Student a free appropriate public education in Student’s February 2015 individualized education program because District would not transport Student to an after school pediatric program in another District after that program closed its local location.

District attaches to its motion a copy of the subpoena duces tecum, which requests that District bring the following categories of documents to the first day of hearing: (1) all District bus routes for the last four years, and (2) all transportation provided by District for the last five years outside District boundaries, including all drop off location addresses, schools transported from, and transportation applications. The declaration included in the subpoena states that good cause exists for the documents' production because they relate to the issue of transportation beyond District boundaries.

District moves to quash the subpoena duces tecum on the grounds that the subpoena did not include the requisite showing of reasonable necessity. District also objects to the requests as vague and overbroad, covering time periods beyond the statute of limitations, seeking documents not related to Student's program, and encompassing inexplicably broad categories.

Student argues that the declaration in the subpoena duces tecum stating that the documents were relevant to Student's case was sufficient to show reasonable necessity. She contends that the documents sought are reasonably necessary to show that District transports other students beyond District boundaries. Student also contends that the documents are specific as to time, place and subject matter.

Student failed to make the requisite showing of reasonable necessity with regard to each category of documents sought by the subpoena. Student's declaration did not make an adequate factual showing of why each category of documents was material and relevant to the issues at hearing. Specifically, the declaration consisted of one conclusory sentence that all the documents sought were relevant, which falls short of meeting the requirement of a factual showing of why the requested documents are *material* and relevant to the litigated issues. The subpoena is therefore defective because there was no adequate showing in the declaration supporting the subpoena as to why Student needs these records at the hearing.

Student's opposition argument fails to remedy the defect in the subpoena duces tecum. The opposition papers are similarly conclusory, and it is unclear how transportation records of other students, other schools, and even other years, are reasonably necessary to show that District was required to offer Student transportation to a specific site for purposes of providing Student a FAPE.

The categories of documents sought are impermissibly broad. Student seeks bus routes and transportation records for the last four to five years, which are well beyond the two-year statutes of limitations, and Student has not alleged an exception to the statute. (20 U.S.C. § 1415(f)(3)(D); Ed. Code, § 56505, subd. (l).) District would be required by FERPA to redact personally identifiable information from the transportation applications requested, including names of students, names of parents, names of caregivers and home and business addresses, significantly limiting the value of such evidence, and possibly rendering the probative value of such evidence to be outweighed by the probability that its admission would necessitate undue consumption of time. (See Gov. Code, § 11513, subd. (f).)

Accordingly, for the reasons set forth above, District's motion is granted, and Student's subpoena duces tecum is quashed.

IT IS SO ORDERED.

DATE: March 7, 2016

DocuSigned by:

Alexa Hohensee

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ALEXA J. HOHENSEE

Administrative Law Judge

Office of Administrative Hearings