

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MESA UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016010070

ORDER GRANTING DISTRICT'S
MOTION TO QUASH

On March 2, 2016, Student served a subpoena duces tecum (SDT), dated February 29, 2016, on Mesa Union School District. On March 8, 2016, District filed a motion to quash Student's SDT. On March 11, 2016, Student filed opposition. As discussed below, District's motion to quash is granted, and the subpoena is quashed. This ruling is without prejudice, such that Student may resubmit it in accordance with the guidance stated in this Order.

APPLICABLE LAW AND DISCUSSION

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. (IDEA)).¹ Rather,

¹ Two exceptions are that parents have the right to request and receive the pupil's "educational records" within five business days at any time (Ed. Code § 56504 (Section 56504)), and the parties are entitled to receive copies of all the documents the educational agency intends to use at hearing. (Ed. Code § 56505, subd. (e)(7).) "Educational records" under the IDEA are defined by the federal statute and Supreme Court decisions to mean institutional records kept by a single central custodian, such as a registrar. (See Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b); *Owasso Ind. School Dist. v. Falvo* (2002) 534 U.S. 426, 434-435 [122 S. Ct. 934, 151 L.Ed.2d 896]) Typical of such records would be registration forms, class schedules, grade transcripts, discipline reports, and the like." (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 751-755.) "[FERPA] was directed at institutional records maintained in the normal course of business by a single, central custodian of the school. (*Id.* at pp. 751-754.) Emails not placed in a student's permanent record, and therefore not "maintained" by the school district, were not educational records as defined under FERPA. (*S.A. ex rel. L.A. v. Tulare County Office of Education* (N.D.Cal. Sept. 24, 2009) 2009 WL 3126322, *7, *aff'd*. *S.A. v. Tulare County Office of Education* (N.D. Cal. October 6, 2009) 2009 WL 3296653.) Copies of assessment protocols include work copyrighted by the assessment test publishers, but provision of protocols to parents under Section 56504 is a fair use of copyrighted material under Title 17 United States Code section 107. (*Newport-Mesa*

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.²

Date and Time of Production Not Specified

Student has no right to prehearing discovery in this special education due process proceeding (beyond a parental request for educational records and the exchange of evidence five days prior to hearing, discussed above). California special education law does not mandate production of records pursuant to a SDT at any date or time prior to the first day of hearing.

Student’s failure to put an appropriate date, or any date, for production of the requested documents is a fatal defect in the SDT. For this reason, the subpoena is quashed.

However, Student may submit a revised SDT with a designated date for production, in conformance with this order. The remainder of this Order concerns the requirements for such a revised SDT should Student submit one.

Reasonable Necessity

A subpoena or SDT in special education proceedings requires a showing of reasonable necessity. (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2).) This condition mirrors the requirement of a showing of good cause for an SDT to issue under civil law. (Code Civ. Proc., § 1985, subd (b).)

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.) A conclusory declaration that the desired documentary evidence is relevant and material is insufficient. (*Id.*, at p. 835.)

The issues in District’s due process hearing request (complaint) are whether (i) District’s October 2015 assistive technology assessment was appropriately conducted, and (ii) Student’s October 22, 2015 individualized education program offered Student a free appropriate public education in the least restrictive environment.

Unified Sch. Dist. v. State of Calif. Dept. of Educ. (C.D. Cal. 2005) 371 F.Supp.2d 1170, 1179.)

² Although the subpoena form created by the Office of Administrative Hearings has options for production of pre-hearing documents under subpoena, these do not apply to special education matters, as OAH has jurisdiction over many types of non-IDEA disputes.

District moves to quash the SDT on the grounds that (i) it does not specify a date or time for production, (ii) it is vague and overly broad as to time and category, and (iii) Student seeks documents that are not educational records, (iv) Student fails to make a showing of reasonable necessity detailing the materiality of the documents sought, and (v) Student seeks improper prehearing discovery.

Student's SDT falls short of demonstrating good cause for production of the documents requested. The SDT requests 53 documents or categories of documents, some of which have a specific date range, but many of which do not. The declaration of Parent attached to the SDT makes conclusory statements that the documents sought are "material" and "needed for preparation" for hearing, but fails to provide detailed support for that conclusion. The SDT also frequently fails specify the "the exact matters or things" to be produced. Some of the categories are so vague as to be rendered virtually meaningless.

Accordingly, for the reasons set forth above, Student has failed to make a threshold showing that the documents requested in the SDT are reasonably necessary for hearing, and District's motion to quash is granted.

ORDER

1. Student's subpoenas duces tecum, dated February 29, 2016, and directed to Mesa Union School District, is quashed in its entirety.
2. This order is made without prejudice to Student seeking issuance of a subpoena duces tecum by the ALJ assigned to hear this matter at the prehearing conference and upon a showing of reasonable necessity.

DATE: March 17, 2016

DocuSigned by:

Alexa Hohensee

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ALEXA J. HOHENSEE

Administrative Law Judge
Office of Administrative Hearings