

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

REDWOOD CITY SCHOOL DISTRICT
AND BELMONT-REDWOOD SHORES
SCHOOL DISTRICT.

OAH Case No. 2015070264

ORDER GRANTING DISTRICT'S
REQUEST FOR RECONSIDERATION
AND GRANTING STUDENT'S
MOTION TO QUASH

On July 30, 2015, the undersigned administrative law judge issued an order quashing the subpoena issued by Redwood City, directing Brooklyn Heights Montessori School to produce on July 28, 2015 (which was extended to August 4, 2015), any and all records and documents pertaining to Student to the October 6, 2015 the due process hearing.

On August 4, 2015, Redwood City filed a Motion for Reconsideration and Clarification of the July 30, 2015 order. Student filed no opposition.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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)). 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, but does not confer the right to prehearing discovery. (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).) While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings, which accord prehearing access to two types of documents: (i) parents have the right to request and receive the pupil’s educational records within five business days at any time (Ed. Code, § 56504), and (ii) the parties are entitled to receive copies of all the documents the educational agency intends to use at hearing, not less than five business days prior to the hearing. (Ed. Code, § 56505, subd. (e)(7).)

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); 34 C.F.R. § 99.3.) Pupil or education records do not include “records of instructional, supervisory, and administrative personnel... which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.” (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

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. Code of Civil Procedure section 1987.1 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

Redwood City alleges new facts and circumstances in support of the request reconsideration and clarification. Specifically, Redwood City claims it did not receive a copy of Student’s motion to quash until July 28, 2015, and that it filed opposition to Student’s motion on July 31, 2015, within the three business days of its receipt of the motion which was not considered by the undersigned ALJ. Redwood City’s papers also clarify that it issued two identical subpoenas to Brooklyn Heights with different return dates, one with a return date of July 28, 2015 and the other with a return date of August 4, 2015. Redwood City timely filed its motion for reconsideration. Accordingly, in light of these new facts, its request for reconsideration of the prior order is granted.

In its opposition to the motion to quash, Redwood City requests that Student’s motion to quash be denied. Redwood City claims that it issued a first subpoena on July 14, 2015 with a return date of July 28, 2015, and then issued the same subpoena a second time on July 21, 2015, moving the return date of August 4, 2015 and effectively withdrawing the first subpoena. Redwood City argues that the subpoena was issued pursuant to the Code of Civil Procedure, and that it does not have the subpoenaed documents which it claims are relevant and necessary for it to defend against Student’s claims.

Here, the two subpoenas issued by Redwood City require Brooklyn Heights' compliance by sending the requested documents to the offices of Redwood City's attorney on July 28, 2015 and August 4, 2015, respectively, well before the scheduled hearing date of October 6, 2015. Student correctly argued that special education law does not contain any provision authorizing prehearing discovery. A party does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulation securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself. (20 U.S.C. § 1415(h); Ed. Code § 56505, subd. (e).)

Although a student's education records can be requested by a student from a district at any time pursuant to Education Code section 56504, Redwood City cites to no authority which permits a district to compel prehearing production of education records held by a third party, even where those records are relevant and necessary to a pending due process proceeding. Redwood City's claim of prejudice notwithstanding, there is no authority which allows the pretrial production sought here. Because Redwood City is not entitled to use a subpoena to obtain prehearing discovery, both subpoenas duces tecum directed to Brooklyn Heights are improper. Student's motion to quash is granted as to both subpoenas.

IT IS SO ORDERED.

DATE: August 10, 2015

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings