BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024110237

ORDER GRANTING MOTION TO QUASH SUBPOENA

DECEMBER 4, 2024

On November 7, 2024, Student filed a request for due process hearing with the Offices of Administrative Hearing, called OAH, naming San Jose Unified School District, called San Jose. On November 7, 2024, a scheduling order was issued scheduling the case for expedited hearing on December 10, 11, and 12, 2024; and December 24 and 26, 2024 for the non-expedited hearing.

On November 8, 2024, Student filed with OAH a subpoena duces tecum, naming San Jose, which was signed by Presiding Administrative Law Judge Joy Redman. The subpoena duces tecum referenced Parent's First Interrogatories and Requests for Production to produce records on San Jose, attached with the subpoena.

The subpoena to San Jose sought the production of any and all of Student's records for special and general education, discipline, attendance, behavior data, rehabilitation plan, performance, progress reports, grades, test results, health, medical records, assessments and protocols, individualized education program, communication logs, emails, correspondence, service logs and school notes. Student's request excluded the records that were provided on September 23, 2024, without describing what records have been produced. The request did not describe why the requested records were necessary for this proceeding. The subpoena requires production on November 26, 2024.

On November 19, 2024, San Jose filed a motion to quash the subpoena on the grounds Student did not show a reasonable necessity for the requested documents and the request is overbroad, unduly burdensome, and oppressive. Student did not file an opposition.

A party to a due process hearing under the Individuals with Disabilities Education Act, called 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 California, the hearing officer shall have the right to issue subpoenas which is an order to appear and give testimony, and subpoenas duces tecum which is ordered to produce records upon a showing of reasonable necessity by a party). (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) This requirement mirrors that required by Code of Civil Procedure section 1985, subdivision (b), which requires:

> 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 or things 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) Cal. App.2d 71, 77.)

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. (20 U.S.C. § 1400 et seq.), which 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).)

Education Code section 56505, subdivision (a), provides that the state hearing shall be conducted in accordance with regulations adopted by the board, and under that authority, the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Prehearing discovery in special education cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District*, (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing five business days prior to the date of the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).)

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 the 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.

San Jose argues that the subpoena duces tecum should be quashed because it fails to make the requisite showing of reasonable necessity for production of records with a statement of facts showing the material and relevant information sought. Here, Student's subpoena duces tecum lacked a showing of reasonable necessity to produce the records.

San Jose's second argument in favor of quashing the subpoena duces tecum is the subpoena lacked a specific date and category specification when describing the production to include "any and all documents." (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951)

Cal. App.2d 71, 77.) Here, without a specific date range and the type of documents that are to be produced, the production is overbroad, unduly burdensome, and oppressive.

Additionally, the subpoena duces tecum requested records a week before the expedited hearing and several weeks before the non-expedited hearing, making the request for production impermissible prehearing discovery.

For the foregoing reasons, San Jose's motion to quash Student's subpoena duces tecum is granted.

ORDER

San Jose's motion to quash Student's subpoena duces tecum is granted. Student may correct the flaws stated in this Order and issue a new subpoena duces tecum to San Jose, if so desired.

Thanayi

Thanayi (Dec 6, 2024 12:49 PST)

Thanayi Lindsey
Administrative Law Judge
Office of Administrative Hearings