BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019090129

ORDER DENYING MOTIONS TO QUASH SUBPOENAS ISSUED TO ABBY ROZENBERG AND SUSAN HOLLAR

JUNE 19, 2020

On January 6, 2020, Student filed an amended request for due process hearing, naming Chaffey Joint Union High School District. On February 21, 2020, a prehearing conference order issued, granting a continuance in this matter, and scheduling the hearing to begin on June 16, 2020.

On May 14, 2020, Chaffey issued eight subpoenas duces tecum to eight potential witnesses. The subpoenas sought particular categories of documents in the witness's possession. They directed the witnesses to submit their documents to the Office of Administrative Hearings, known as OAH. Notices to consumer were sent to Student advising Student of the subpoenas. Copies of the subpoenas were sent to Student with

the notice to consumer. On June 8, 2020, Student filed motions to quash all eight subpoenas on the grounds that they were overbroad and sought documents that were not reasonably necessary for Chaffey's defense. On June 11, 2020, Chaffey, opposed the motion. This Order concerns two of those subpoenas. The remaining six subpoenas will be addressed by a separate order.

As explained below, the motions to quash the subpoenas issued to witnesses Abby Rozenberg and Susan Hollar are denied. Student is ordered to instruct those two witnesses to comply with the terms of the subpoenas and submit the documents to OAH. OAH will provide the parties with electronic access to the documents upon receipt.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act 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 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) 107 Cal. App.2d 71, 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 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.

REASONABLE NECESSITY FOR THE RECORDS

Student argues that the subpoenas should be quashed because they fail to make the requisite showing of reasonable necessity for the requested documents with a statement of facts showing the material and relevant information sought. (*Johnson v. Superior Court, supra,* 258 Cal. App.2d at 835-836; see also *Seven Up Bottling Company v. Superior Court, supra,* 107 Cal. App.2d at 77.)

However, the documents subpoenaed from Abby Rozenberg and Susan Holler are material and relevant. Specifically, Student's Issue 9 puts the documents directly at

issue. Issue 9 asks OAH to decide whether Chaffey denied Student a free appropriate public education "by failing to address Student's lack of progress and regression in the area of speech and language identified in the 2017 Abby Rozenberg and 2019 Susan Hollar evaluation reports. . .." Chaffey subpoenaed ten categories of documents from these evaluators, stating a specified time period, all concerning their assessments of Student, the underlying information they considered in performing the assessments, their communications with specified individuals concerning Student and the assessments, their instructions and their compensation. The subpoenaed documents are material and relevant. They are reasonably necessary for Chaffey to explore the two evaluations these witnesses prepared, which Issue 9 put directly at issue. The subpoenas are not overly broad. They are limited to documents concerning the assessments and communications concerning Student within a pertinent time frame. The subpoenas are tailored to documents and communications that are reasonably necessary to explore the contents of the assessments that are at issue.

The subpoenas were procedurally proper. They were issued timely. They contain the requisite notice to consumer. They were accompanied by declarations establishing reasonable necessity for production. They do not seek prehearing discovery. They were issued to give adequate notice to allow for the production of documents to OAH, such that electronic access to the documents could be provided on the first day of hearing.

ORDER

1. Student's motions to quash Chaffey's subpoenas to Abby Rozenberg and Susan Hollar are DENIED.
2. Student is ordered to instruct Abby Rozenberg and Susan Hollar to comply with the subpoenas issued to them. Student is ordered to instruct Abby Rozenberg and Susan Hollar to:
    a. Sign and date the declaration of custodian described in the Subpoena Information Sheet.
    b. Place the records or things, or an exact copy of the records, in an envelope or other wrapper.
    c. Enclose a copy of the subpoena in the envelope.
    d. Enclose the original of the declaration and seal the envelope.
    e. Write the name and case number of the matter on the outside of the envelope.
    f. Place the envelope in an outer envelope and mail it to the Office of Administrative Hearings at: 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. THE DOCUMENTS MUST ARRIVE AT THE OFFICE OF ADMINISTRATIVE HEARINGS ON FRIDAY JUNE 26, 2020, BETWEEN THE HOURS OF 8 AM AND NOON.
    g. Call the Office of Administrative Hearings at 916-263-0880 to notify OAH that they have mailed the items for this duces tecum, the anticipated delivery time, and tracking information.

h. Mail a copy of the declaration, but not the records or things, to the party who issued this subpoena.

DocuSigned by:
June Lehrman
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June Lehrman

Administrative Law Judge

Office of Administrative Hearings