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 MOTION TO QUASH SUBPOENA ISSUED TO CUSTODIAN OF RECORDS FOR KIDS CONNECTIONS DEVELOPMENTAL THERAPY CENTER

AUGUST 6, 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, scheduling the hearing to begin on June 16, 2020.

On June 18, 2020, Chaffey issued a subpoena duces tecum to the custodian of records for Kids Connections Developmental Therapy Center, an occupational and behavioral therapy clinic. The subpoena sought particular categories of documents in the witness's possession. It directed the witness to submit documents to the Office of

Administrative Hearings, known as OAH. A Notice to Consumer was sent to Student advising Student of the subpoena. A copy of the subpoena was sent to Student with the notice to consumer. On July 13, 2020, OAH received documents directly from Kids Connections.

On July 22 2020, Student filed a motion to quash the subpoena on the grounds that it was overbroad and sought documents that were not reasonably necessary for Chaffey's defense. On July 24, 2020, Chaffey opposed the motion. As explained below, the motion to quash the subpoena issued to the custodian of records for Kids Connections is now denied. OAH will provide the parties with electronic access to the documents that have been produced.

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

The documents subpoenaed from the custodian of records for Kids Connections are material and relevant. Specifically, the testimony Student elicited from witness Dr. Cynthia Conway on August 4, 2020, puts the documents directly at issue. Dr. Conway provided services to, and performed an evaluation of Student. Chaffey subpoenaed categories of documents stating a specified time period, all concerning the services to and evaluation of Student, communications with specified individuals concerning Student, their instructions and their compensation. As established by the testimony Student elicited from Dr. Conway, the subpoenaed documents are material and relevant. They are reasonably necessary for Chaffey to explore the services provided and assessment Dr. Conway conducted. The subpoena was not overly broad. It was limited to documents concerning Student within a pertinent time frame. The subpoena was tailored to documents and communications that

are reasonably necessary to explore the services and assessment by Dr. Conway that Student put at issue.

The subpoena was procedurally proper. It was issued timely. It contains the requisite notice to consumer. It was accompanied by a declaration establishing reasonable necessity for production. It did not seek prehearing discovery. It was issued to give adequate notice to allow for the production of documents to OAH, such that electronic access to the documents could be provided during the hearing.

ORDER

Student's motion to quash Chaffey's subpoena to the custodian of records for Kids Connections Development Therapy Center is DENIED.

DocuSigned by:
June Lehrman
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June Lehrman
Administrative Law Judge
Office of Administrative Hearings