BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019110341

ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM SERVED ON SARA RICE SCHIFF, PH.D.

APRIL 22, 2020

On November 12, 2019, Student filed a request for due process naming Antioch Unified School District. On February 21, 2020, Student filed a motion requesting leave to file an amended complaint. On March 9, 2020, the Office of Administrative Hearings, referred to as OAH, granted Student's request to file an amended complaint. Student's amended complaint was deemed filed on March 9, 2020. On March 9, 2020 a scheduling order was issued in this matter, scheduling the case for hearing on May 5, 6, and 7, 2020.

On April 2, 2020, Antioch issued a subpoena duces tecum on Sara Rice Schiff, Ph.D. A notice to consumer was sent to Student's attorney advising Student of the

subpoena directed to Schiff. A copy of the subpoena was sent to Student's attorney with the notice to consumer. The subpoena issued to Schiff sought the following documents: all assessments or evaluations Schiff conducted of Student; all documents related to Schiff's screening, observations, evaluation, assessment and testing of Student, including all data collected, notes made, and completed testing protocols, questionnaires, surveys and/or rating sheets; all documents reflecting any opinions or recommendations Schiff made regarding treatment, placement and/or services for Student; all documents upon which Schiff relied in forming opinions regarding Student; all documents relating to any IEP or treatment team meeting Schiff attended or convened for Student, including without limitation plans, notes, letters, forms, emails, text messages, voicemail messages, and audio recordings; counseling records for Student; progress reports for Student; goals established and/or implemented for Student; all service logs and/or treatment notes relating to Student; all applications, registration, and/or intake forms completed by or on behalf of Parents for Student; all billing and payment records relating to Student; all documents reflecting how Student and/or Parents were referred to Schiff; all communications between Schiff and Parents regarding Student, including without limitation all letters, notes, emails, texts, or reports; all communications between Schiff and any attorney or advocate representing or acting on behalf of Student or Parents, including without limitation all letters, notes, emails, texts, or reports. These documents were required to be delivered to Antioch by May 5, 2020.

On April 8, 2020, and again on April 10, 2020, Student filed a motion to quash the subpoena on the grounds that Antioch failed to show it had reasonable necessity for the requested records, and the categories of documents sought are unreasonably broad. On April 10, 2020, Antioch opposed the motion arguing that the requested documents

were reasonably necessary for Antioch to prepare its defense, and that the documents sought from Schiff by the subpoena were not overly broad or duplicative.

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) 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 subpoena duces tecum should be quashed because it fails 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,* at pp. 835-836; see also *Seven Up Bottling Company v. Superior Court*, *supra*, at p. 77.)

Antioch's declaration in support of the subpoena states it requires the requested documents to defend itself, it has no other means to get these records, and it requires the documents to prepare for its cross-examination and defense. Student contends Antioch's declaration in support of the subpoena failed to show reasonable necessity, in that it presents no facts establishing reasonably necessary for Antioch's defense. Student also argues that Antioch's declaration fails to show the requested documents are relevant to the issues pled in this case.

Antioch's declaration fails to establish that the subpoenaed documents are material and relevant to the issues in this case.

The subpoena Antioch issued on Schiff was accompanied by a declaration which stated in merely a conclusory fashion that the records sought are relevant to the issues. The declaration fails to present any specific facts as to how the demanded documents

are relevant to the issues in this case, which is a requisite to establishing reasonable necessity for production of the records. Section 1987.1 of the Code of Civil Procedure, provides that a court may make an order quashing a subpoena entirely if no good cause for production of the records has been established.

MEDICAL PRIVACY

California law recognizes a constitutional right to privacy in an individual's medical history. (See, *Pettus v. Cole*, (1996) 49 Cal. App. 4th 402, 440 ["the 'zones of privacy' created by Article 1, section 1 of the California Constitution extend to the details of one's medical history"]; *Palay v. Superior Court, (1993)* 18 Cal. App. 4th 919, 932, ["Fundamental to the privacy of medical information is the ability to control its circulation …"] The constitutional right of privacy is not absolute, but is subject to invasion where a compelling public interest is involved. (*Freed v. Home Depot U.S.A, Inc.* (S.D. Cal 2019) 2019 W.L. 183833, p. 5; *Hill v. National Collegiate Athletic Association* (1994) 7 Cal. 4th 1, 37.) State law governs an individual's right to privacy in a civil matter. (Fed. Rule Evid. 501; *Freed v. Home Depot U.S.A.* (S.D. Cal. 2019) 2019 WL 183833.)

The subpoena issued failed to comply with the requirement that it be accompanied by a declaration establishing good cause for production of the records. The applicable standard requires a statement of "reasonable necessity" designating the "exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case." Here, the subpoena as written was overbroad. Rather than tailoring the document request, the subpoena broadly sought all documents from Dr. Schiff related to any services provided to Student, or assessments and evaluations of Student at any time. The documents demanded are described very broadly. Antioch failed to establish that these documents are relevant to

the discrete issues and time frames which are the subject of the hearing in this matter. No basis exists for seeking records so broadly described and unlimited by any time frame.

Student has a right to privacy in her medical records. While Antioch argues that Student has placed her medical records at issue by requesting home instruction and asserts that the records are maintained as private through the rules governing special education and other education records, these arguments both fall short of a complete analysis of the protection of Student's right to privacy in their medical records. Student has not placed her entire medical history at issue. Student maintains her right to privacy as to medical matters not at issue in this case. (*Freed, supra*, at p. 5. ["The party seeking the constitutionally protected information bears the burden of establishing that the information is directly relevant to the claims at issue."].) Antioch has failed to meet this burden.

Furthermore, the fact that some of the requested documents might be disclosed in the educational setting and thus, be subject to the confidentiality protections of educational records, does not ameliorate concerns with invasions of Student's privacy. "[A]dequate protections against public disclosure do not obviate constitutional concerns as privacy interests are still implicated when the government accesses personal information without disseminating it." (*Grafilo v. Wolsham* (2019) – Cal. App 3. --, 2019 WL 1450733, citing *Lewis v. Superior Court* (2017) 3 Cal. 5th 561, 577.)

ORDER

1. Student's motion to quash Antioch Unified School District's subpoena duces tecum issued to Sara Rice Schiff, Ph.D. is GRANTED. The subpoena for records issued to Sara Rice Schiff, Ph.D. is hereby quashed.

2. Counsel for Antioch Unified School District shall immediately serve a copy of this Order on Sara Rice Schiff, Ph.D.

DocuSigned by:
Christine Arden
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Christine Arden

Administrative Law Judge

Office of Administrative Hearings