BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DESERT SANDS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025070172

ORDER GRANTING MOTION TO QUASH IN PART SUBPOENA TO JASON MILLS

OCTOBER 20, 2025

On July 1, 2025, Parents on behalf of Student a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Desert Sands Unified School District, called Desert Sands. The due process hearing is scheduled to begin on October 21, 2025. An Administrative Law Judge is referred to as ALJ.

On October 7, 2025, Student issued a subpoena duces tecum to Jason Mills, Director of Special Education for Desert Sands. On October 8, 2025, Desert Sands filed a motion to quash Requests 2(a) and 2(b) in the subpoena duces tecum on the grounds Student failed to demonstrate reasonable necessity for the requested documents and

the requests are overbroad and burdensome. On October 9, 2025, Student opposed the motion quash. Student argued he established reasonable necessity for the requested documents.

On October 10, 2025, OAH held a prehearing conference. The ALJ presiding over the PHC allowed the parties to be heard on Desert Sands' motions to quash and advised the parties an orders on the motions would be ruled on after the PHC. Following the PHC, the undersigned ALJ was assigned to oversee the due process hearing.

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

Education Code section 56505, subdivision (a), provides that "[t]he 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 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. (5 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. Pre-hearing 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 the opposing party plans to introduce at hearing five business days prior to the date of the first day of hearing. (Ed. Code, 56505(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.

DISCUSSION

Student's subpoena duces tecum to Jason Mills seeks production of four categories of documents, including email correspondence referencing Student between Mills and seven teachers and related service providers and email correspondence between Mills and Margaret McCarthy about grading decisions for Student, including communications concerning any decision to assign Student pass/no pass grades.

Desert Sands moves to quash the following two categories of documents:

> Request 2(a). For the period of July 1, 2023, through July 1, 2025, all email correspondence authored by or sent to [Jason Mill] that references Student . . . and that was sent or received from the following employees . . .", identified as two district teachers, a program specialist, a general education specialist, a special education coordinator, a speech and language pathologist, and a school psychologist.
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> Request 2(b). All emails authorized [sic] or received by Jason Mills and Margaret McCarthy regarding grading decisions for Student from September 1, 2025 [sic], through June 30, 2025, including but not limited to communications concerning the decision to assign pass/no pass grades, and the rationale for that grading method.

Desert Sands seeks to quash Requests 2(a) and (2(b) on the grounds that the subpoena is overly broad and lacks reasonable necessity as to the requested records. Student opposes the motion to quash on the grounds the emails are reasonably necessary to demonstrate, among other things, when Desert Sands made decisions about reducing aide support for Student, altered delivery of special education related services, and modified Student's grades or grading processes outside the IEP team process.

The ALJ finds that Student's subpoena lacks reasonable necessity and is overly broad as to some of the requested records. Accordingly, the ALJ modifies Student's subpoena as discussed in more detail below.

STUDENT FAILED TO ESTABLISH REASONABLE NECESSITY, IN PART

Desert Sands asserts the subpoena should be quashed because it failed to make the requisite showing of reasonable necessity for the requested documents as the documents are not necessary to try any of Student's issues. Student disagrees and argues that the records requested are material and relevant to prove Student's case.

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 (*Seven Up*).)

A subpoena issued before trial must be served with a declaration showing good cause for production of the matters described in the subpoena pursuant to Code of Civil

Procedure section 1985. The declaration must provide full detail regarding the materiality of the documents demanded to the issues in the case, and state that the witness has the desired matters or things in their possession. (Code Civ. Proc., § 1985.) It is insufficient to state that the requested documents are material, rather facts must be shown upon which the court can see that the records sought contain material entries. (*Seven Up*, *supra*, 107 Cal.App.2d 71, 77.) The mere conclusion that records are material with no facts supporting such allegations constitutes a conclusion of law which does not meet the reasonable necessity requirement. (*Ibid.*)

Student contends that Desert Sands denied Student a free appropriate public education, called FAPE, during the 2023-2024 and 2024-202 school years. Student's complaint alleges 27 issues, many with multiple subparts. The 27 issues, as clarified with the parties at the PHC, are:

1. failing to consider if Student qualified for special education and related services under additional eligibility categories, specifically other health impairment and specific learning disability;
2. failing to offer measurable goals in the October 31, 2023, individualized education program called IEP;
3. failing to offer goals in all areas of need in the October 21, 2023, IEP;
4. materially failing from November 1, 2023, through the end of the 2024-2025 school year to implement the one-to-one aide support required by the IEPs in effect after October 31, 2023;
5. materially failing from November 1, 2023, through the end of the 2023-2024 school year to implement aide support with adequately trained and supervised personnel;

6. failing in the three-year review assessments conducted for December 2023, through the filing of the complaint, to conduct a functional behavior analysis assessment;
7. failing to offer measurable goals in the December 12, 2023, IEP;
8. failing to offer goals in all areas of need in the December 12, 2023 IEP;
9. failing to offer appropriate related services in the December 12, 2023, IEP;
10. failing to develop an appropriate behavior intervention plan in April 2024;
11. materially failing the entire 2023-2024 school year to implement Student's accommodations and related services in Student's operative IEPs;
12. significantly impeding Parents' opportunity to participate in the decisionmaking by providing insufficient progress reports on goals from the October 31, 2023, IEP;
13. significantly impeding Parents' opportunity to participate in the decisionmaking process by providing insufficient progress reports on goals from the December 12, 2023, IEP;
14. materially failing the entire 2024-2025 school year to implement Student's accommodations and related services in Student's operative IEPs;
15. significantly impeding Parents' opportunity to participate in the decisionmaking process by unreasonably delaying the provision of the IEP document for meetings held between September 10, 2024, and February 12, 2025, and waiting until February 14, 2025, to provide the complete IEP;
16. significantly impeding Parents' opportunity to participate in the decisionmaking process by failing to give Parents timely and complete prior written notices in response to Parents' requests or disagreements during IEP team meetings from October 28, 2024, through March 24, 2025;

17. significantly impeding Parents' opportunity to participate in the decisionmaking process by failing to give Parents timely and complete prior written notices in response to Parents' written requests of March 2, March 13, April 8, and May 16, 2025;
18. significantly impeding Parents' opportunity to participate in the decisionmaking process by failing to incorporate Parents' concerns or address Parents' core concerns in the October 28, 2024 IEP, as finalized on May 21, 2025;
19. significantly impeding Parents' opportunity to participate in the decisionmaking process by failing to inform Parents and include a change in Student's IEP document that Student's grades would be modified to a pass/no-pass grading system;
20. significantly impeding Parents' opportunity to participate in the decisionmaking process by refusing Parents' March 13, 2025 request for assessment of Student's need for assistive technology;
21. significantly impeding Parents' opportunity to participate in the decisionmaking process by refusing Parents' March 24, 2025 request to assess Student for central auditory processing disorder;
22. failing to offer measurable goals in the October 28, 2024 IEP, as finalized on May 21, 2025;
23. failing to offer goals in all areas of need in the October 28, 2024 IEP, as finalized on May 21, 2025;
24. failing to offer appropriate special education and related services in the October 28, 2024, IEP, as finalized on May 21, 2025;

25. significantly impeding Parents' opportunity to participate in the decisionmaking by providing insufficient progress reports on goals in the October 28, 2024, IEP, as finalized on May 21, 2025;
26. materially failing for the entire 2024-2025 school year to implement the operative IEPs; and
27. materially failing on April 15, 2025, to implement the October 28, 2024 IEP, as partially consented to before April 15, 2025, regarding the pick-up and drop-off safety protocol?

The declaration in support of Student's subpoena fails to set forth any facts related to the relevance, materiality, or reasonably necessity of Request 2(a) as to the issues alleged in the complaint. The declaration also does not state that the witness has the documents in his possession or under his control. (Code Civ. Proc., § 1985, subd. (b).) The declaration makes only general conclusory and circular statements that emails sought between Mills and Student's teachers and service providers are material to the issues in the complaint. Specifically, Student does not explain how emails between Mills, teachers, and related services providers exist and are reasonably necessary to prove:

- Issue 1 (failing to find Student eligible under additional categories);
- Issues 2, 3, 7, 8, 9, 10, 22, 23, and 24 (failing to offer measurable goals or goals in all areas of suspected need, a behavior intervention plan, and related services in IEPs developed on October 31, 2023, December 12, 2023, and October 28, 2024, as continued to May 21, 2025);
- Issues 4, 5, 11, 14, 26, and 27 (failing to implement Student's operative IEPs during the 2023-2024 and 2024-2025 school years);
- Issues 6, 20, and 21 (failing to conduct assessments in functional behavior, assistive technology, and central auditory processing disorder); and

- Issues 12, 13, 15, 16, 18, 25 (significantly impeding Parent's participation in the IEP process).

With respect to Request 2(a), Student argues that electronic mail between Mills and members of Student's IEP team for the two-year statutory period alleged in the complaint are essential to understanding how decisions regarding Student's supports were made, whether Desert Sands issued prior written notices, and whether Desert Sands predetermined Student's program, denied parental participation, or failed to document program changes. Student fails to establish such electronic mail exists, are in Mills' possession or under his control, or how any such communications between Mills and Desert Sands' staff and service providers are reasonably necessary to prove these issues. Student failed to meet the requisite reasonable necessity showing for the requested documents in Request 2(a).

With respect to Request 2(b), the declaration in support of the subpoena states that one of Student's general education teacher unilaterally changed Student's grading system to pass/no pass. Further, the declaration asserts that Mills informed the family through electronic mail that teachers may assign grades using various methods. Student argues that grading modifications should have been discussed through the IEP process.

Arguably, the existence of emails between Mills and Student's teacher relating to changes in Student's grades are reasonably necessary to prove Issue 19 (significantly impeding Parents' opportunity to participate in the decisionmaking process by failing to inform Parents and include a change in Student's IEP document that Student's grades would be modified to a pass/no-pass grading system.) The declaration in support of the subpoena establishes a reasonable necessity for obtaining electronic mail between Mills

and Student's teacher, and asserts Mills has electronic mail relating to Issue 19 in his possession. Therefore, Student established reasonable necessity as to Request 2(b).

STUDENT'S REQUEST 2(a) IS OVERLY BROAD

Desert Sands argues that Student's subpoena duces tecum to Mills is overly broad. Student argues the subpoena is narrowly tailored to the issues in the case.

In evaluating a motion to quash, the court should consider various factors, including whether the "sought material [is] adequately described and not overly broad." (*Facebook, Inc. v. Superior Court of San Diego County* (2020) 10 Cal.5th 329, 347 (citing *City of Alhambra v. Superior Court* (1988) 205 Cal.App.3d 1556D, 1134, modified (Dec. 1, 1988).)

Student's Request 2(a) seeks all email correspondence for the period of July 1, 2023, through July 1, 2025, authored by or sent to [Jason Mill] that references Student and that was sent or received from seven Desert Sand employees. This fails to narrow the scope to a specific subject, issue, or persons, could potentially disclose other student information, and lacks any meaningful specificity regarding the documents sought. Instead, it broadly encompasses an extensive range of records, including potentially vast amount of irrelevant information. As such, Student's Request (a) is overly broad and improper.

While section 19871.2 of the Code of Civil Procedure provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it, as no reasonable necessity for production of the records has been established as to 2(a), the subpoena cannot be modified. Therefore, Request 2(a) in the subpoena duces tecum is quashed.

ORDER

1. Desert Sands' motion to quash Student's subpoena duces tecum to Jason Mills is granted in part as follows.
    a. Jason Mills must produce electronic mail authored or received by Jason Mills and Margaret McCarthy regarding grading decisions for Student from September 1, 2024, through June 30, 2025, including but not limited to communications concerning the decision to assign pass/no pass grades, and the rationale for that grading method as stated in Request 2(b). This does not include any privileged documents or documents already produced by Desert Sands.
    b. Jason Mills must upload any responsive documents to Case Center no later than October 23, 2025, by 9:30 AM.
2. Desert Sands' motion to quash Student's subpoena duces tecum to Jason Mills is quashed with respect to Request 2(a).
3. Counsel for Student must immediately serve a copy of this Order on Jason Mills.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings