BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ADELANTO ELEMENTARY SCHOOL DISTRICT, DESERT MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA, AND DESERT MOUNTAIN CHILDREN'S CENTER.

OAH CASE NUMBER 2025060065

ORDER DENYING MOTION TO QUASH AND MODIFYING THE SUBPOENAS DUCES TECUM, AND DENYING REQUEST FOR SANCTIONS

OCTOBER 22, 2025

On June 2, 2025, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Adelanto Elementary School District. The Office of Administrative Hearings is referred to as OAH.

On August 5, 2025, OAH granted Student's motion to amend and deemed filed Student's first amended complaint. Student's first amended complaint added Desert

Mountain Special Education Local Plan Area, called SELPA, and Desert Mountain Children's Center as respondents.

On August 22, 2025, OAH issued an order determining Student's due process complaint was partially sufficient, following a notice of insufficiency filed by Adelanto, Desert Mountain SELPA, and Desert Mountain Children's Center, called the Respondents. That order provided Student with 14 days to file an amended complaint, otherwise, the matter would proceed only on the issues deemed sufficient.

Student filed a second amended complaint on September 18, 2025. OAH subsequently issued a new scheduling order, which set the due process hearing to begin on November 4, 2025.

On October 14, 2025, Student filed a motion to quash, asserting that the Respondents served Student with notices to consumer and four related subpoenas duces tecum to Cognitive Diagnostic Associates, corresponding to four of their assessors: Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas. Student asserts that the attached notice to consumer is defective because it indicates the incorrect day for production as reflected in the attached subpoenas duces tecum. The underlying subpoenas required production of the requested documents on November 4, 2025, the first day of the due process hearing. The notices to consumer specified a production date of August 19, 2025.

Student requests that OAH quash the subpoenas deuces tecum, and sanction Respondents, finding the Respondents to be acting in bad faith and abusing the subpoena process, and prohibit the Respondents from issuing subpoenas on Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas, in the future.

On October 16, 2025, OAH granted Student's request for continuance. OAH set the due process hearing to begin on December 9, 2025.

On October 17, 2025, the Respondents timely opposed Student's motion. The Respondents argue that Student suffered no harm from the typographical error in the notices to consumer, the Respondents otherwise properly served Student, and that the motion was moot due to OAH continuing the due process hearing dates.

As discussed below, Student has not established that the subpoenas should be quashed, but has established that they seek production on the incorrect date considering the change in due process hearing dates. The subpoenas shall be modified to reflect the currently-scheduled due process hearing dates.

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).)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, Office of Administrative Hearings, referred to as 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.

THE RESPONDENTS DID NOT FAIL TO SERVE CONSUMER NOTICE

California law requires that a notice to consumer be served on the subject of a subpoena for personal records not less than 10 days prior to the date for production of records plus the additional time required based on the method of service per Code of Civil Procedure section 1013. (Code Civ. Proc., § 1985.3, subd. (b).) Personal records are those records, whether maintained on paper or electronically, that are sought from those providing personal service to a party such as health care providers, psychiatrists, bankers, pharmacists, laboratories, insurance companies, telephone service providers and schools to name a few. (Code Civ. Proc., § 1985.3, subd. (a)(1).) The proof of service of the notice to consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).)

Student asserts that the subpoenas at issue seek personal records and that the Respondents served a defective notice to consumer.

Respondents argue that the notice to consumer served on Student meets all legal requirements, and that the typographical error in the date for production did not prejudice Student. Respondents also argue that the notice to consumer has served its purpose, because Student has, in fact, exercised his right to move to quash the subpoenas in question. Respondents argue that they have sent Student a corrected Notice to Consumer following Student's instant motion.

Student correctly points out that the notice to consumer includes an incorrect date for production. However, the underlying subpoenas included the correct date based on the calendar for this matter at the time the subpoenas were issued. Student

did not establish any prejudice by this error. Rather, Student has demonstrated he is aware of his right to move to quash the subpoenas, which is one of the primary purposes of the Notice to Consumer. (Code of Civ. Proc., § 1985.3, subd. (g).) Notably, Student cites Code of Civil Procedure, subdivision (f), indicating that subdivision "explicitly guarantees the consumer a fair and reasonable opportunity to object." However, that subdivision covers personal records maintained by a telephone corporation that is a public utility. Student did not establish that authority is relevant here.

Considering the totality of the circumstances, the error in the notice to consumer does not invalidate the underlying subpoenas duces tecum, or require them to be quashed. Therefore, Student's motion to quash is denied on that ground. However, the notice to consumer and underlying subpoenas do not reflect the correct date of production, following OAH's granting of Student's request for continuance of the hearing. Accordingly, it is appropriate for OAH to modify the four subpoenas and associated notices to consumer to reflect the date of production as being December 9, 2025, the first day of the due process hearing. (Code of Civ. Proc., § 1987.1.)

Respondents acknowledge that they have not yet served the subpoenas in question on Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas, pending OAH's ruling on Student's motion to quash. This Order does not prevent Student or Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas from moving to quash the subpoenas based on defective or untimely service, or any other proper legal basis, if any.

STUDENT HAS NOT ESTABLISHED THE RESPONDENTS' ACTIONS ARE SUBJECT TO SANCTIONS

Student argues that the Respondents have "deliberately weaponized the legal process against a self-represented parent," and have demonstrated, "a pattern of willful procedural abuse and intentional deception carried out in bad faith" Accordingly, Student seeks a finding that Respondents have engaged in sanctionable conduct and an order prohibiting Respondents from subpoenaing Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas in the future.

In certain circumstances, an administrative law judge, known as the ALJ, presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

OAH also has the authority to order that expenses be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the entity that is responsible for conducting due process hearings) as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses,

including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

This is not the first time Student has alleged Respondents have engaged in sanctionable conduct. In several previous motions, Student has argued, unpersuasively, that Respondents' actions justify sanctions. Student's arguments here are equally unavailing. Student's subjective characterization of Respondent's actions is not substantiated by the objective facts Student has established. Student's repeated, and often conclusory accusations, are not persuasive evidence or argument that Respondents have engaged in sanctionable conduct. Moreover, Student provides no legal authority establishing that any of Respondents' conduct justifies sanctions.

Lastly, only the ALJ who is presiding over the matter may place expenses at issue. (Cal. Code Regs., tit. 5, § 3088, subd. (b).) The ALJ declines to do so as such sanctions are not necessary to ensure an orderly and fair hearing. Accordingly, Student's request for sanctions is denied.

ORDER

1. Student's motion to quash Respondents' subpoenas is denied.
2. The Respondents' subpoenas duces tecum and associated notices to consumer are modified to change the date of production of the documents to December 9, 2025, the first day of the due process hearing.
3. Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas are not required to comply with the subpoena until December 9, 2025, at 9:30 AM.
4. This Order does not prevent Student or Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas from timely moving to quash the subpoenas based on defective or untimely service, or any other proper legal basis, if any.
5. Counsel for Respondents shall serve a copy of this Order on Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas when it serves its subpoenas duces tecum and related notices to consumer on them.
6. Student's request for sanctions is denied.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings