BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FONTANA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010747

ORDER MODIFYING AND GRANTING MOTION TO QUASH SUBPOENA IN PART

MAY 20, 2024

On January 24, 2024, Student, filed a request for due process naming Fontana Unified School District and Redlands Unified School District. On February 23, 2024, an order granting a continuance in this matter was granted scheduling the case for hearing on May 29 and 30, 2024.

On May 3, 2024, Fontana issued a subpoena duces tecum on the custodian of records for Loma Linda University Medical Center. A notice to consumer was sent to Student advising Student of the subpoena(s) directed to the Custodian of records of Loma Linda University Medical Center. Copies of the subpoenas were sent to Student

with the notice to consumer. The subpoena to Loma Linda Medical Center sought records from May 28, 2021, through May 29, 2024, to include the following:

a. Assessment reports and evaluation reports, including draft reports, that reference Student or Parent, by name, initials, or identification;

b. Special education documents that reference Student or Parent by name, initials, or identification number;

c. Medical assessments, intake forms, diagnostic reports, lab results, prescription information, medical recommendations, admission notes and documentation, discharge summaries, chart notes, and doctor's notes, including dates of intake and discharge, that reference Student or Parent by name, initials, or identification number.

d. Observation data and notes that reference Student or Parent by name, initials, or identification number.

e. Communication logs that reference Student or Parent by name, initials, or identification numbers;

f. Clinical and diagnostic interview notes that reference Student and/or Parent by name, initials, or identification number;

g. Correspondence, including but not limited to, letters and emails, between Loma Linda staff and Parent regarding Student;

h. Contract for service, admissions records, and registration documents that reference Student or Parent by name, initials, or identification number;

i. Counseling, therapy, psychological, or psychiatric service logs that reference Student or Parent by name, initials, or identification number;

j. Billing records that reference Student to Parent by name, initials or identification number.

On May 15, 2024, Student filed a motion to quash the subpoenas on the grounds that the request was overly broad, would cause an undue burden on Student, the records requested are protected medical records and Loma Linda cannot release the records pursuant to the Health Insurance Portability and Accountability Act, and the notice to consumer was not proper. On May 17, 2024, Fontana opposed Student's motion to quash arguing the request is not overly broad, and would not cause an undue burden, Loma Linda has the authority to release Student's medical records in the instant case, and the errors in Fontana's notice to consumer were harmless and do not negate the required notification.

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, 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.

FAILURE 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 subpoena at issue seeks personal records and the notice to consumer was improper. Specifically, the notice to consumer listed Del Mar Union School District as the requesting party. Fontana argued this error was harmless as all other case information was correct and consistent within the instant case.

Here, Fontana provided an incomplete notice to consumer seeking an extensive list of medical records. Student argues the inclusion of the incorrect requesting party listed on line one of the notice to consumer is fatal to the subpoena deuces tecum.

Section 1987.1 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. Therefore, the subpoena is modified to change line one on the notice to consumer to Fontana Unified School District which is consistent with the Case Header and Proof of Service filed with the document.

SCOPE OF THE SUBPOENA

Student contends that the subpoena is overly broad as the subpoena requests documents to include documents that for time periods not covered by Student's complaint. Student's allegations assert that Fontana Unified failed to provide her a FAPE between January 24, 2022, and January 24, 2024. Fontana is seeking records from Loma Linda from May 28, 2021, through May 29, 2024. Fontana failed to provide any basis for needing records outside the statutory period.

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 the production of 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. Fontana is seeking to obtain wholesale all of Student and Parent's medical records during her time at Loma Linda. The request is so overbroad Fontana is seeking doctor's notes, chart notes, and prescription information and psychiatric service logs. Student alleged Fontana failed to provide her a FAPE for failing to provide an appropriate in-home or hybrid placement. At no time did Student put her entire medical file at issue. Fontana did not establish a basis for medical records more than a year prior to the time period at issue. Moreover, Fontana failed to establish a basis for medical records to include medical assessments, diagnostic reports, lab results,

prescription information, admission notes, chart notes, doctor's notes. This extensive request for documentation far exceeds the documents Fontana requires to defend itself at due process.

Student has a right to privacy in her medical records. While Fontana argues that Student has placed their 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 their entire medical history at issue in requesting home instruction. Student maintains their 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."].) Fontana argues these records to defend itself in the due process hearing. Fontana argues it needs the documentation to support Student's referenced hospitalizations and a failure to implement education services while Student was hospitalized.

Furthermore, the fact that the documents would be disclosed in the educational setting and thus 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.)

This is not to say that Student has an absolute right to block disclosure of any information related to their medical history. A right of privacy is not absolute. (*Hill,*

supra at p. 38.) A court must construe any claim of waiver, due to placing medical matters at issue, narrowly and the competing compelling interest is found only where it is established that the material sought is directly relevant to the litigation. (*Freed*, *supra,* at p. 5 citing *Tylo v. Superior Court* (1993) 55 Cal. App 4th 1379, 1387.)

ORDER

1. Student's motion to quash Fontana's subpoena is granted in part and the subpoena is hereby modified. Fontana's notice to consumer, dated April 24, 2024, signed by Julie Coate, is modified as to line one, specifically, the requesting party. The requesting party is modified to identify Fontana Unified School District.
2. Loma Linda shall produce the following documents that reference Student during the time period of January 24, 2022, through January 24, 2024:
    a. Assessment and evaluation reports, including draft reports, that reference Student by name, initials, or identification number;
    b. Special education documents that reference Student by name, initials, or identification number;
    c. Communication logs that reference Student by name, initials, or identification number;
    d. Correspondence, including but not limited to, letters and emails, between Loma Linda staff and Parent regarding Student;
    e. Contracts for service, admission records, and registration documents that reference Student.
    f. Billing records that reference Student or Parent by name, initials, or identification number.

3. Loma Linda shall not produce any records relating to:
    a. Medical assessments, intake forms, diagnostic reports, lab results, prescription information, medical recommendations, admission notes and documentation, discharge summaries, chart notes, and doctor's notes, that reference Student or Parent by name, initials, or identification number;
    b. Observation data and notes that reference Student by name, initials, or identification number;
    c. Clinical and diagnostic interview notes that reference Student and/or Parent by name, initials, or identification number;
    d. Documents and records relating to diagnoses and/or prescribed medications that reference Student or Parent by name, initials, or identification number;
    e. Counseling, therapy, psychological or psychiatric service logs that reference Student or Parent by name, initials or identification number.
    f. Any record that falls before January 22, 2022, and after January 22, 2024.
4. Counsel for Fontana shall immediately serve a copy of this order on Loma Linda.

Tiffany Gilmartin

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings