BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022040273

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO QUASH SUBPOENA

JULY 6, 2022

On April 7, 2022, Student filed a request for due process naming Los Angeles Unified School District. On May 18, 2022, an order granting a continuance in this matter was granted scheduling the case for hearing beginning on July 12, 2022.

On June 16, 2022, Student issued a subpoena duces tecum on Los Angeles. The subpoena to Los Angeles sought two categories of documents.

First, the subpoena asked for production of "any and all written communications (e.g. emails, letters, correspondents) of Los Angeles Unified School ("DISTRICT") employees relating to STUDENT held by DISTRICT from November 2019 through present date. Specifically, we are requesting all communications related to STUDENT'S

Individualized Education Plan development, distance learning, COVID-19, placement, behavior supports, extended school year, and service logs."

Second, it asked for "all written communications (e.g. emails, letters, correspondents) between DISTRICT and any other public agency (including local public health) and/or DISTRICT employees (including school board members) regarding the provision of special education supports to students during the COVID-19 pandemic from March of 2020 though the present day."

The requested documents were to be produced to Student by uploading them to the Case Center document management program used by the Office of Administrative Hearing, known as OAH, for hearing exhibits. The documents would become available to Student on the first day of hearing.

On June 28, 2022, Los Angeles filed a motion to quash the subpoena, but did not include or attach the subpoena at issue. On June 29, 2022, Los Angeles refiled the motion to quash with the subpoena attached. Although the June 29, 2022 motion included a notation in the caption "*Motion to Amend to Include Exhibit 1 Erroneously Omitted from Initial Filing," there was no such motion included or argued in the text of the document. Although Los Angeles' first motion is deficient and the second motion was been filed after the motion cut-off without accompanying declaration of good cause or argument as to how amendment should be allowed, Student has not objected to consideration of the motion on those grounds. OAH will consider the motion despite these defects, accepting counsel's representation of simple error and finding no prejudice to Student.

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.

SERVICE

Los Angeles objects to the subpoenas on two grounds. First, it asserts that the subpoenas, which were sent to Los Angeles' counsel by US Mail and email, were not properly served. Los Angeles asserts that it did not receive the copy sent by US Mail until July 5, 2022. Los Angeles further states that it has a policy that its employees are not authorized to accept service of process on its behalf. For these reasons, Los Angeles argues that service of the subpoena was not effectuated because it was not personally served. Los Angeles does not assert that its counsel did not receive the copy sent by email.

Student countered that Los Angeles was represented by its in-house counsel at that time he sought to serve the subpoenas. Before Student sent the subpoena by US Mail and email, he mailed Los Angeles' litigation coordinator and its in-house counsel on June 13, 2022, to ask to whom he should direct the subpoenas. Student received no answer, and Los Angeles objected that the inclusion of its litigation coordinator on the inquiry was improper contact with a represented party. Student got no response. On June 15, 2022, Student received a Notice of Representation informing him that Los Angeles would be represented by the in-house counsel he had emailed. That day, Student sent the subpoena to Los Angeles' in-house counsel by email and certified mail.

Student and Los Angeles were exchanging documents electronically throughout the course of this matter. Los Angeles' notices of representation mentioned above were

served electronically, and Los Angeles' proof of service for those documents noted that they were served electronically on Student "per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251." Los Angeles has objected that the cited code provisions do not govern service of process. Los Angeles has not alleged or provided evidence that it reserved from that agreement the right to require personal service of subpoena duces tecum. Given the interaction of the parties, the fact that Los Angeles has had actual notice of the imminence of the subpoena and did receive the subpoena, and the fact that Los Angeles is a party to the action, service of the subpoena was sufficient. District argues in its Statement Regarding Meet and Confer that it is not the custodian of records for its employees' written communications, but it did not raise that argument in its original Motion to Quash so it cannot be evaluated now.

SCOPE

Los Angeles contends that the subpoena is overly broad, unduly burdensome, and constitutes improper discovery.

Los Angeles notes that Student has asserted that it failed to provide him a free appropriate public education from April 7, 2020, to the date of filing, but the first request seeks any and all communications between November 2019 and the second from March 2020 and the present. Student's requests are not limited to persons involved in his educational planning or even to persons with knowledge of him

Student seeks all written communication of Los Angeles employees regarding Student and the development of his IEPs, his distance learning, "covid-19", his placement, his behavior support, his extended school year, and his service logs. The breadth of the request is not limited. To comply, Los Angeles would have to review

every communication from every employee in every office and school site to check whether they have discussed Student and those areas of inquiry. There is no implied rule of reason to limit the search, and such a search would be unduly burdensome.

The first request shall be modified as follow: Los Angeles shall produce all emails and letters sent or received from April 2020 to the date of filing by all current employees of Los Angeles who attended any of Student's IEP team meetings from that date, and limit the communications requested to emails and letters discussing Student's IEPs, his distance learning, his placement, his behavior support, and his extended school year services, limited to the following persons:

Nicole Anulewicz;
Shahla Babri;
Victoria Barickman;
Shannon Beyer;
Martin Blythe;
Veronica Bolanos;
Dr. Shirley Cornett;
Lucy/Lucyne Cohen;
Ms. Coleman;
Felicia Conlan;
Paul Debler;
Lauren Dizon;
Maya Engelberg;
Laura Velez Garcia;
Yolanda Garcia;
Alexander/Alexandra Garcia Lopez;

Lorena Guevara;

Dr. Linda Gregg;

Mike Harrington;

Rose Jaurigui;

Meikle Jerrid;

Sarah Kim;

Mr. Kunzman;

Joy Kushner;

Michael Madzar;

Janki Merai;

Ms. Michaels;

Claudia Munoz;

Robert Ngan;

Juan Perez;

Dave Price;

Maricela Sandoval;

Stacy Selco;

Myesha Sharpe;

Maria Sklar;

Soussan Sabetghadam;

Ms. Selco;

Ms. Spigel;

Jeannine Topalian;

Tina Valdez;

Breanna Vignolini;

Susan Voltz;

Tali Whalley;

Nashana Wright Steele;

Ms. Yoo; and

Adam Zeise.

Should any persons on this list not be current employees of Los Angeles Unified School District, Los Angeles has no obligation to produce documents sent or received by them not involving any other person on this list.

When this motion was discussed at the prehearing conference, the ALJ gave the parties a tentative ruling and directed them to meet and confer on mutually-agreeable terms for the modification of this part of the subpoena. Unfortunately, Student declined the opportunity to lists the persons whose communications he sought, and Los Angeles deferred to offer any suggestions at all. Accordingly, the ALJ has composed this list by drawing from the team meeting reports included in the evidentiary materials lodged with OAH. The list may have been more complete and less burdensome with input from the parties.

In the second request in the subpoena, Student sought all written communication of Los Angeles employees regarding the provision of special education supports to special education services to students. Such a request is improper and irrelevant. The policies of Los Angeles and how they were developed are not relevant to an action under the Individuals with Disabilities Education Improvement Act. This action is only concerned with Student's needs and whether or not they were met. Student's second request for production in the subpoena is quashed.

ORDER

1. Los Angeles' motion to quash Student's subpoena to it for written communications is DENIED as to the first category of requested documents, following modification. On July 12, 2022, at the commencement of the hearing, Los Angeles shall produce by posting to Case Center all emails and letters sent or received from April 2020 to the date of filing discussing Student's IEPs, his distance learning, his placement, his behavior support, and his extended school year services by all current employees of Los Angeles whose names appear in this list:
    a. Nicole Anulewicz;
    b. Shahla Babri;
    c. Victoria Barickman;
    d. Shannon Beyer;
    e. Martin Blythe;
    f. Veronica Bolanos;
    g. Dr. Shirley Cornett;
    h. Lucy/Lucyne Cohen;
    i. Ms. Coleman;
    j. Felicia Conlan;
    k. Paul Debler;
    l. Lauren Dizon;
    m. Maya Engelberg;
    n. Laura Velez Garcia;
    o. Yolanda Garcia;
    p. Alexander/Alexandra Garcia Lopez;
    q. Lorena Guevara;

r. Dr. Linda Gregg;

s. Mike Harrington;

t. Rose Jaurigui;

u. Meikle Jerrid;

v. Sarah Kim;

w. Mr. Kunzman;

x. Joy Kushner;

y. Michael Madzar;

z. Janki Merai;

aa. Ms. Michaels;

bb. Claudia Munoz;

cc. Robert Ngan;

dd. Juan Perez;

ee. Dave Price;

ff. Maricela Sandoval;

gg. Stacy Selco;

hh. Myesha Sharpe;

ii. Maria Sklar;

jj. Soussan Sabetghadam;

kk. Ms. Selco;

ll. Ms. Spigel;

mm. Jeannine Topalian;

nn. Tina Valdez;

oo. Breanna Vignolini;

pp. Susan Voltz;

qq. Tali Whalley;

rr. Nashana Wright Steele;

ss. Ms. Yoo; and

tt. Adam Zeise.

2. Los Angeles' motion to quash Student's subpoena to it is GRANTED as to the second request seeking all written communication of Los Angeles employees regarding the provision of special education supports to special education services to students during the Covid-19 pandemic.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings