BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023040286

ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM ISSUED TO TERRI LOPEZ

APRIL 27, 2023

On April 7, 2023, Student filed a request for due process naming Salinas Union High School District. On April 10, 2023, a scheduling order was issued scheduling the case for hearing for expedited issues on May 3 and 4, 2023. A non-expedited hearing was set for May 23, 24, and 25, 2023.

On April 18, 2023, Student issued a subpoena duces tecum for Terri Lopez, school principal. A copy of the subpoena was sent to counsel for Salinas.

On April 19, Salinas filed a motion to quash the subpoena on the grounds that Student failed to establish reasonable necessity for the documents sought and that the subpoena was overbroad, burdensome, and failed to provide reasonable specificity.

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.

Salinas's motion to quash Student's April 18, 2023 subpoena duces tecum issued to Principal Terri Lopez contained a sworn declaration by Salinas's counsel in support of the motion. However, the declaration pertained to Student's subpoena issued to Director of Special Education, Jennifer Smith, and not to Terri Lopez. Accordingly, Salinas's motion to quash is Denied for failure to provide a declaration in support its motion to quash Student's subpoena duces tecum issued to Principal Lopez.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings