BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

LOS ALTOS SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2019120313

ORDER GRANTING MOTION TO QUASH SUBPOENA

MARCH 26, 2020

On December 9, 2019, Los Altos School District filed a request for due process naming Student. An order following prehearing conference was issued on March 6, 2002. Parties indicated at the time no prehearing motions were contemplated. On March 16, 2020 the scheduled due process hearing was continued until April 26, 2020 as a result of the statewide shelter-in-place directive issued by the Governor.

On March 1, 2020, Student issued a subpoena duces tecum and subpoena to the school superintendent, special education director, school principal, and the school psychologist. None of the subpoenas indicate the method of service; however, Los Altos is not challenging whether the subpoenas were appropriately served. The subpoena to school superintendent sought for school years 2018-2019 and 2019-2020 all incident reports concerning Student, all universal complaint procedure investigations concerning

Student, and all documentation related to allegations of sexual harassment involving Student.

The subpoena duces tecum issued to the special education director requested production of all written notes personally drafted at any meeting attended regarding Student. Any and all memos, notes, emails or other communication related to Student. Further, special education director was to produce, all evaluations, quizzes, progress reports, assessments, tests, school work related to Student from 2017 until present. Finally, the special education director was directed to produce all communication or notes made during any communication with any employee or representative of Los Altos, including its attorney.

The subpoena duces tecum issued to the school principal requested production of all notes, memos, emails related to Student. Further, the school principal was to produce all evaluations, quizzes, progress reports, assessments, tests, school work related to Student from 2017 until present. The school principal was also to produce all communication or notes made during any communication with any employee or representative of Los Altos, including its attorney.

The final subpoena duces tecum was issued to the school psychologist requested production of all original protocols for all assessments and evaluations of Student dating back to 2016. Further, the school psychologist was to produce all evaluations, quizzes, progress reports, assessments, tests, school work related to Student from 2017 until present. The school psychologist was also to produce all communication or notes made during any communication with any employee or representative of Los Altos, including its attorney.

On March 17, 2020, Los Altos filed a motion to quash, arguing Student failed to establish a reasonable necessity the documents requested were relevant to the due process hearing.

On March 20, 2020 Student filed an opposition to Los Altos' motion to quash.

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.

REASONABLE NECESSITY FOR THE RECORDS

Los Altos argues that the subpoenas duces tecum should be quashed because Student fails to make the requisite showing of reasonable necessity for the requested documents with a statement of facts showing the material and relevant information sought. (*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.)

Student's declaration in support of the subpoena fails to articulate the necessity for the documents requested. Student's declaration states no facts to support a good cause determination the documents subpoenaed are material and relevant. It is merely a recitation of the documents requested.

The subpoena that was issued failed to comply with the requirement that it be accompanied by a declaration establishing reasonable necessity for production of the records. Here, Student made no statement of the basis for the need for the records. While 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; as no

good cause for production of the records has been established, the subpoena cannot be modified.

ORDER

1. Los Altos' motion to quash Student's subpoena duces tecum issued to the school superintendent, district special education director, school principal, and school psychologist is GRANTED. The subpoena duces tecum is hereby quashed.

DocuSigned by:
Tiffany Gilmartin
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Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings