BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CAMPBELL UNION SCHOOL DISTRICT,

CALIFORNIA SCHOOL FOR THE DEAF AND

CALIFORNIA DEPARTMENT OF EDUCATION.

OAH CASE NUMBER 2022050685

ORDER GRANTING, IN PART, CALIFORNIA SCHOOL OF THE DEAF'S MOTION TO QUASH SUBPOENA DUCES TECUM

OCTOBER 04, 2022

On May 18, 2022, Student filed a request for due process naming Campbell Union School, California School for the Deaf, referred to as CSD, and the California Department of Education referred to as CDE. On May 20, 2022, a scheduling order was issued. On September 16, 2022, OAH issued an order granting a continuance in this matter and scheduling the case for hearing on October 11 through October 13, 2022.

On September 6, 2022, Student issued a subpoena duces tecum on CSD and CDE, who legal counsel jointly represents. The subpoena sought copies of communications by any CSD employees related to Student from January 2020 to the present date. Student specifically requested communications related to Student's Individualized Education Plan, referred to as an IEP, distance learning, specialized academic instruction, reading interventions, assessments, and service logs.

On September 13, 2022, CDE and CSD filed a Prehearing Conference statement. CDE and CSD included a motion to quash the September 6, 2022 subpoena duces tecum in the statement. CDE and CSD did not note the motion in conformity with OAH's rules and procedures. As such, Administrative Law Judge Christine Arden ordered the parties to meet and confer and permitted Student until October 3, 2022, to file an opposition.

APPLICABLE LAW

CDE and CSD moved to quash the subpoenas because the subpoena is insufficiently defined and does not identify any specific CSD staff who may have communications relating to Student or his educational issues. CSD also objected to the time period as overbroad. Student opposed the motion arguing that the motion was improperly filed and improperly noticed, that the subpoena is sufficiently tailored to seek only communications for a set period, that Student has not requested documents before the date of hearing, and that the documents are necessary to support the issues alleged in the complaint.

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.

NO RIGHT TO PREHEARING DISCOVERY

There is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (20 U.S.C. § 1400 et seq.) Instead, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

Education Code, section 56505, subdivision (a), provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Pre-hearing discovery in special education cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District,* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any

evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

Student's subpoena directs CSD and CDE to produce and upload the subpoenaed records to Case Center by the first date of the hearing. OAH has a procedure for receiving subpoenaed documents, and the Administrative Law Judge will review the documents and determine their relevance at the commencement of the hearing. The issued subpoena does not seek prehearing discovery. It was issued to give adequate notice to produce documents. The subpoena directed CSD to produce the documents to Case Center by the first day of the hearing. As such, the motion to quash on this ground is denied.

REASONABLE NECESSITY FOR THE RECORDS

CSD and CDE argued that the subpoena duces tecum should be quashed because it 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 argued that the materials sought are reasonably necessary for Student to present evidence on the issues raised in his complaint, including allegations the respondents failed to implement Student's IEP, failed to offer goals in all areas of need, and failed to offer or provide adequate specialized instruction, failed to make a clear offer of a free and appropriate public education, referred to as a FAPE, failed to offer an assessment, and failed to assess Student in all areas of suspected disability, among others. Student argues that because the documents sought are not part of the Student's records, they could not seek those documents by other means.

Student's declaration and opposition establish that the documents subpoenaed are material and relevant, and the motion to quash on this ground is denied.

SCOPE OF THE SUBPOENA

CDE and CSD contended that the subpoena is overly broad as the subpoena requests documents for periods not covered by Student's complaint and would require CSD to inquire into every employee or staff member to determine if they have had any communications with Student. CSD also argued that the scope of the subpoena would include immaterial communications. Student's counsel argued that during the meet and confer with counsel for CSD, Student offered to limit the scope of the subpoena to the people who have been part of Student's education during the period outlined in the subpoena. Student could not, however, fully identify every person who had contact with Student or Parent, including Student's teachers.

The addendum to the subpoena defines "Communications" as "writings, emails, and/or correspondence." The date period is from January of 2020 through the present date. As noted above, the subpoena seeks communications from CSD employees "relating" to Student, focusing on Student's educational aspects.

The documents sought are sufficiently tailored and relevant to the action filed by Student. Student has established a need for the documentation. However, CSD's argument that there is no identification as to which staff members or employees may have communicated anything relating to Student has merit. To locate those documents would place an undue burden on CSD and CDE. Accordingly, CSD and CDE's motion to quash the scope of the subpoena is granted in part, and the subpoena duces tecum is modified to be consistent with this order.

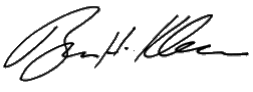
Within one business day of this order, Student's counsel will notify counsel for CSD and CDE of the names of specific employees and staff members that Student is aware may have had communications related to Student. CSD and CDE shall then produce all communications from those individuals, as defined in the subpoena, from January 1, 2020, to May 18, 2022, by 9:00 AM on October 11, 2022. CSD and CDE are also ordered to produce all communications for the same period generated by any of Student's teachers and aids at CSD.

ORDER

1. CSD and CDE's motion to quash Student's subpoena duces tecum is granted in part, and the scope of the subpoena is modified as set forth above.

2. CSD and CDE shall produce all communications, as defined in the subpoena, from employees and staff identified by Student from January 1, 2020, to May 18, 2022. The documents shall be uploaded to Case Center by 9:00 AM on October 11, 2022.

3. CSD and CDE are further ordered to produce all communications for the same period, as defined in the subpoena, from any of Student's teachers and aids at CSD.



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings