BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MENLO PARK CITY SCHOOL DISTRICT.

OAH CASE NUMBER 2024010353

# ORDER GRANTING IN PART, AND DENYING IN PART, STUDENT'S MOTION TO QUASH EIGHT SUBPOENAS DUCES TECUM ISSUED BY DISTRICT

MAY 1, 2024

On January 11, 2024, Student filed a request for due process with the Office of Administrative Hearings, called OAH, naming Menlo Park City School District, called Menlo Park. On January 29, 2024, OAH issued an Order granting a joint request for a continuance of the hearing in this matter to May 7, 2024, through May 9, 2024.

## THE CHALLENGED SUBPOENAS AND MOTION TO QUASH

On April 23, 2024, Menlo Park, issued eight subpoenas duces tecum demanding production of documents on May 7, 2024, the first day of hearing to each of the following witnesses:

1. Custodian of Records for Lindamood-Bell;
2. Gail Zuckerwise, Center Director, Lindamood-Bell Learning Processes, called LMB (also requiring Zuckerwise to testify);
3. Michelle Ayeni, teacher at Charles Armstrong School (also requiring Ayeni to appear to testify);
4. Custodian of Records for Charles Armstrong School;
5. Dr. Yvette Tazeau, licensed psychologist (also requiring Tazeau to appear to testify);
6. Annalise Beyer-Johnson, teacher at Charles Armstrong School (also requiring Beyer-Johnson to appear to testify);
7. Parent, Shannon Thoke (also requiring Thoke to appear to testify); and
8. Parent, Jason Watson, (also requiring Watson to appear to testify).

Each of the above listed subpoenas duces tecum included almost identical definitions of terms, except for the term "YOU" which refers to the recipient of each subpoena. The Categories of Documents (section C) of Attachment 1 to each subpoena duces tecum, identifies documents which must be produced by the applicable witness on May 7, 2024, the first day of hearing. Menlo Park's attorney supported the subpoenas' document demands with her declaration given under penalty of perjury asserting, among other things, that "[t]he documents sought by this subpoena are material to the issues, necessary for Respondent's defense, and necessary to resolve this Action."

On April 23, 2024, Student filed Student's Motion to Quash District's Subpoenas Duces Tecum, called Student's Motion to Quash, with OAH. Student's Motion to Quash requests that OAH quash all eight of the above listed subpoenas duces tecum issued by Menlo Park on three grounds. The first ground is that Menlo Park failed to establish reasonable necessity for the demanded documents. The second ground of the opposition is that the document demands were overbroad and invaded Student's privacy rights. The third ground for the opposition is that the subpoenas are defective because Menlo Park failed to provide Student with proofs of service on the witnesses when it initially issued the subpoenas. Within the body of Student's Motion to Quash, Student also objected to the demand for witnesses Michelle Ayeni and Annalise Beyer-Johnson, Student's teachers at Charles Armstrong School, to appear at hearing to testify, on the grounds it would be inconvenient for them to leave work to testify at hearing, and an administrator from Charles Armstrong School will be testifying at hearing and can describe Student's educational program at the school.

Menlo Park opposed Student's Motion to Quash on the grounds it has a reasonable necessity for the requested documents, and it cannot obtain them in any manner other than through the subpoena process. Menlo Park claims specifically it has been unable to obtain certain material documents it needs to defend itself at hearing because Parents limited the scope of "releases of information" Parents gave it.

District produced the proofs of service on witnesses for each subpoena duces tecum on April 26, 2024, along with its written opposition to Student's Motion to Quash. Consequently, Menlo Park's initial lack of provision of the proofs of service to Student is not a valid reason to quash the subpoenas. However, each witness, except Parents, who are parties to this case, must be properly served with the applicable subpoena before such witnesses can be compelled to produce documents or appear at hearing to testify.

## APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act, called the IDEA, 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 is similar to 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 applicable standard to subpoena documents in proceedings brought under the IDEA is the stricter "reasonable necessity" standard, instead of the "good cause" standard. However, both standards require a 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, the 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. OAH may also quash or modify a subpoena in response to a motion to quash a subpoena duces tecum.

## THE ISSUE AND SUBISSUES IN THIS CASE

Menlo Park opposes Student's Motion to Quash on the ground it is reasonably necessary it requires the subpoenaed documents and testimony of witnesses in order to defend itself in this matter. The issue and sub-issues to be litigated at the hearing in this case, as established at the April 26, 2024 prehearing conference, called the PHC, are as follows:

1. Did Menlo Park City School District deny Student a free appropriate public education, called a FAPE, during the 2023 extended school year and the 2023-2024 regular school year, in the individualized education program, called an IEP, dated May 11, 2023, by failing to:
    a. offer appropriate measurable goals in reading decoding, reading comprehension, reading fluency, math calculation, math reasoning, written expression, attention, and social-emotional functioning;
    b. offer any goals in the following areas of need: Spanish vocabulary, Spanish reading comprehension, and math problem solving in Spanish;
    c. offer appropriate specialized academic instruction;

d. offer appropriate one-to-one aide support services and curriculum modifications to Student when she was in in general education classes;
e. offer an appropriate placement, specifically, a small educational setting with interventions across all subjects; and
f. timely file a due process request seeking an Order confirming that the IEP dated May 11, 2023, offered Student a FAPE?

At the PHC counsel for both parties presented oral argument in support of, and opposition to, Student's Motion to Quash.

## SUBPOENAS ISSUED TO LINDAMOOD-BELL AND ZUCKERWISE ARE QUASHED BECAUSE STUDENT'S PREVIOUS PARTICIPATION IN LMB IS NOT RELEVANT TO THIS ISSUE AND SUBISSUES IN THIS CASE

Student apparently attended a LMB program sometime prior to the period applicable to this case. Linda Zuckerwise, who was issued a subpoena duces tecum requiring her to both produce documents and appear at hearing to testify, is the LMB center director. Student's attorney stated on the record at the PHC that Student is not seeking reimbursement from Menlo Park of any sums paid to LMB. Moreover, neither party claims Student attended an LMB program during the 2023 extended school year and/or the 2023-2024 regular school year, the two time periods relevant to the issue and sub-issues in this case.

Menlo Park failed to make a convincing argument to justify either of the subpoenas issued to the Custodian of Records of LMB, or to Zuckerwise. Therefore, the documents demanded in the subpoenas duces tecum issued to the Custodian of Records of LMB and to Zuckerwise, are not relevant to the issue and sub-issues in this

case. Consequently, the subpoenas duces tecum issued to the Custodian of Records for LMB, and to Zuckerwise, are both quashed in their entirety. Consequently, LMB will not be required to produce the demanded documents. Moreover, Zuckerwise will not be required to either appear at hearing to testify, or to produce the requested documents.

## DOCUMENT DEMANDS IN SUBPOENAS ISSUED TO THOKE AND WATSON ARE BOTH MODIFIED TO DELETE DOCUMENTS RELATED TO LMB

Subpoenas duces tecum, and for appearance at hearing to testify were issued to each of Thoke and Watson, Student's Parents. In those subpoenas the term "PROGRAM" is defined as "Lindamood-Bell Learning Processes" in the "Definitions" section B of attachment 1 to the subpoenas. Those two subpoenas also include demands for multiple document categories related to Student's participation in LMB. As discussed above, Student's participation in LMB is not relevant to the issue and sub-issues in this case.

Consequently, the subpoenas duces tecum issued to each of Thoke and Watson are hereby modified by deleting the reference to "PROGRAM" in the definitions section of each subpoena. Those two subpoenas are each further modified to delete from the "Categories of Records Requested" (section C) in the attachment 1 to the subpoenas all categories of documents demanded which relate to LMB or Student's PROGRAM. Therefore, Parents are not required to produce any documents relating to Student's participation in a LMB program and assessments given to Student by LMB.

## SUBPOENAS FOR ATTENDANCE OF A WITNESS AT HEARING ARE ALLOWED

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)." Thus, subpoenas are available to require the production of information that is reasonably necessary in order for a party to present their case at hearing.

In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in California Civil Code. California Civil Code section 1985 governs the issuance of subpoenas. In accordance with the California Civil Code, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced. Parties must also comply with the consumer protections of California Civil Code 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services* (1993) 17 Ca. App. 4th 1072.) A subpoena for the attendance of a witness must also meet the reasonable necessity standard by a factual showing of why the testimony and/or production of records 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.)

## AYENI AND BEYER-JOHNSON MUST EACH APPEAR AT HEARING TO TESTIFY IF THEY WERE PROPERLY SERVED WITH THE APPLICABLE SUBPOENA DUCES TECUM

Student also argues teachers Ayeni and Beyer-Johnson, teachers at the Charles Armstrong School, should not be required to testify at hearing because they will be inconvenienced by appearing at hearing to testify, and because their testimony would be cumulative since an administrator from Charles Armstrong School will testify about Student's program there. However, Student's argument is not persuasive. All subpoenaed witnesses are inconvenienced when they are required to attend a legal proceeding to testify. Therefore, witness inconvenience is not an appropriate objection, particularly for a hearing being conducted via videoconference, which is far more convenient for witnesses than a hearing conducted "in person."

Moreover, the school administrator who will testify at hearing likely does not have personal knowledge of certain matters regarding Student's education and progress at Charles Armstrong School that the teachers have. Additionally, it is likely the school administrator would only be able to provide hearsay testimony on certain subjects, while Ayeni and Beyer-Johnson may have personal knowledge on those topics. Therefore, if Ayeni and Beyer-Johnson were each properly served in a manner prescribed by law with the subpoena duces tecum and to testify at hearing, they must appear to testify at hearing and produce documents.

## THE DOCUMENTS DEMANDED IN THE SUBPOENAS ISSUED TO CHARLES ARMSTRONG SCHOOL, AYENI, AND BEYER-JOHNSON ARE OVERBROAD AND ARE HEREBY MODIFIED

Section C (Categories of Records Requested), paragraph 1, of Attachment 1 to each of the subpoenas duces tecum issued to the Custodian of Records to Charles Armstrong School, Ayeni, and Beyer-Johnson, demands production of "ALL DOCUMENTS in YOUR custody, possession, or control RELATING TO STUDENT, including but not limit to the following: … ." That initial phrase is followed by 17 specific categories of documents (identified in subparagraphs 1 a through 1 q) in the subpoenas to Ayeni and Beyer-Johnson, and 18 specific categories of documents (identified in in subparagraphs 1 a through 1 r) in the subpoena to Charles Armstrong School. That document request included in each of those three subpoenas is overbroad, unduly burdensome for the witnesses, and seeks documents irrelevant to the issue and sub-issues of this case. Therefore, the lead in language in Section C (Categories of Records Requested), paragraph 1, of Attachment 1 to each of the subpoenas duces tecum issued to the Custodian of Records to Charles Armstrong School, Ayeni, and Beyer-Johnson, is hereby modified to read as follows:

"1. All the following DOCUMENTS in YOUR custody, possession, or control:" The specific document category requests identified in subparagraphs 1a through 1q, for Aveni and Beyers-Johnson subpoenas remain unchanged. The specific document category requests identified in subparagraphs 1a through 1r for the Custodian of Records of Charles Armstrong School subpoena remain unchanged.

## DOCUMENT REQUESTS IN PARARGRAPHS 2, 3 & 4 OF SECTION C OF ATTACHMENT 1 TO THE SUBPOENAS FOR THOKE, WATSON, CHARLES ARMSTRONG SCHOOL, AYENI AND BEYER-JOHNSON ARE OVERBROAD AND ARE DELETED FROM THOSE FIVE SUBPOENAS

Paragraphs 2, 3, and 4 of Section C (Categories of Records Requested), Attachment 1 to each of the five subpoenas duces tecum issued to Thoke, Watson, the Custodian of Records to Charles Armstrong School, Ayeni, and Beyer-Johnson, each demand production of "ALL COMMUNICATION RELATING TO STUDENT between YOU and …" various other people, are all overbroad, unduly burdensome for the witnesses, and seek documents irrelevant to the issue and sub-issues of this case. Therefore, paragraphs 2, 3, and 4 of Section C (Categories of Records Requested), Attachment 1 to each of the five subpoenas duces tecum issued to Thoke, Watson, the Custodian of Records to Charles Armstrong School, Ayeni, and Beyers-Johnson are hereby deleted.

## THE MOTION TO QUASH THE SUBPOENA ISSUED TO DR. TAZEAU IS DENIED IN ITS ENTIRETY

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.)

Student brought this case, and put her educational needs at issue in this matter. Dr. Tazeau's requested records are relevant to the issues in this case. Student does not have an absolute right to block disclosure of any information related to her 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.)

In this case, the records demanded in the subpoena to Tazeau are relevant to the issues in this case. Student failed to meet her burden of proof to establish that the document request attached to the subpoena duces tecum issued to Student's private psychologist, Dr. Yvette Tazeau, is overbroad, unrelated to the issue and sub-issues in this case, or improperly undermines Student's right to keep her medical records private. Therefore, Student's motion to quash the subpoena duces tecum issued to Tazeau is denied in its entirety.

## ORDER

1. Student's motion to quash is granted as to the subpoena duces tecum issued to the Custodian of Records for Lindamood-Bell. That subpoena is quashed in its entirety.
2. Student's motion to quash is granted as to the subpoena duces tecum and to appear at hearing issued to the Linda Zuckerwise, Center Director for Lindamood-Bell. That subpoena is quashed in its entirety.

3. Student's motion to quash subpoenas duces tecum issued to Shannon Thoke and Jason Watson, is partially granted, and such subpoenas are modified as follows. All references to "PROGRAM" and demands seeking documents relating to the Lindamood-Bell program are hereby deleted from those two subpoenas.
4. Student's motion to quash the portion of the subpoenas to appear at hearing issued to teachers Michelle Ayeni and Annalise Beyer-Johnson is denied. Those two witnesses must appear to testify at hearing if they are properly served with the subpoenas.
5. Student's motion to quash the subpoenas duces tecum issued to the Custodian of Records for Charles Armstrong School, Ayeni, and Beyer-Johnson are granted in part as the description of documents demanded therein are overbroad. Therefore, the "lead in" language in Section C (Categories of Records Requested), paragraph 1, of Attachment 1, to each of the subpoenas duces tecum issued to the Custodian of Records to Charles Armstrong School, Ayeni, and Beyers-Johnson, is hereby modified to read as follows:

> "1. All the following DOCUMENTS in YOUR custody, possession, or control:" The specific document category requests identified in subparagraphs 1a through 1q, for Aveni and Beyers-Johnson subpoenas remain unchanged. The specific document category requests identified in subparagraphs 1a through 1r for the Custodian of Records of Charles Armstrong School subpoena remain unchanged.

6. Student's motion to quash the subpoenas duces tecum issued to Thoke, Watson, the Custodian of Records for Charles Armstrong School, Ayeni, and

Beyer-Johnson is granted in part because the description of the documents demanded in each of those subpoenas are overbroad. Therefore, paragraphs 2, 3, and 4 of Section C (Categories of Records Requested), Attachment 1 to each of the five subpoenas duces tecum issued to Thoke, Watson, the Custodian of Records to Charles Armstrong School, Ayeni, and Beyers-Johnson are hereby deleted.

7. Student's motion to quash Menlo Park's subpoena duces tecum to Dr. Yvette Tazeau is denied. The requested records shall be produced by Dr. Tazeau on the first day of the hearing in this matter.
8. Counsel for Student shall immediately serve a copy of this order on each of the persons who were served with subpoenas addressed in this Order.

*Christine Arden*

Christine Arden
Administrative Law Judge
Office of Administrative Hearings