BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BELLA MENTE MONTESSORI ACADEMY.

OAH CASE NUMBER 2022110710

# ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

JANUARY 9, 2023

On November 23, 2022, Student filed a request for due process naming Bella Mente Montessori Academy, referred to as Belle Mente, with the Office of Administrative Hearings, called OAH. Student contends Bella Mente erroneously determined in a November 7, 2022 manifestation determination review that Student's alleged October 2022 threats to commit a school shooting were not a manifestation of his disability, or a direct result of Bella Mente's failure to implement Student's individualized education program, called an IEP. OAH scheduled the case for an expedited hearing on January 10, 11, and 12, 2023.

On December 21, 2022, Bella Mente issued a subpoena duces tecum directed to Detective Amanda Johnson with the San Diego County Sheriff's Department. Bella Mente used OAH's subpoena duces tecum form. The subpoena sought all Sheriff's Department records relating to Student, including psychiatric emergency response team records, from October 1, 2020 to the present, including, but not limited to, investigation reports, and other investigatory materials, arrest and incident reports, search warrants, witness statements, and email communications to and from Parents. The subpoena's declaration of necessity declared the records sought were reasonably necessary for the proper presentation of Bella Mente's case because they would "provide evidence of threats made to commit a school shooting and the weapons and other items found at [Student's] home that resulted in disciplinary action." The subpoena directed the Sheriff's Department to produce the records by January 5, 2023, by uploading them to OAH's Case Center electronic evidence management system. It also directed Detective Johnson to appear and testify at the hearing of this matter on January 10, 2023, at 9:30 AM.

Bella Mente sent Student's attorney a copy of the subpoena and a notice to consumer on December 21, 2022. On December 22, 2022, Student filed a motion to quash the subpoena in its entirety, including the demand to produce Sheriff's Department records, and the demand for Detective Johnson's testimony.

Student moved to quash the demand to produce records on grounds that:

- Juvenile case files may not be obtained or inspected by civil or criminal subpoena. (Cal. Rules of Court, rule 5.552.)
- Records or information gathered by law enforcement agencies relating to the taking of a minor into custody, temporary custody, or detention

(juvenile police records) are treated as confidential juvenile court records. (Welf. and Inst. Code § 827.9.)

- Records related to law enforcement investigations are not subject to public disclosure when there is a pending investigation. (Gov. Code § 6254, subd. (k).) [re disclosure of public records]
- Belle Mente's document demand improperly sought discovery in this matter by directing the Sheriff's Department to upload records to OAH's Case Center system on January 5, 2023, five days prior to the start of the hearing.

Student moved to quash both the demand to produce records, and the demand for Detective Johnson's testimony, on grounds that:

- Bella Mente's demands for records and testimony were overly broad and vague since they sought information starting from October 2020, more than two years before the incidents leading to the manifestation review at issue.
- Bella Mente failed to demonstrate the relevance of the subpoenaed requested records and testimony.
- Bella Mente failed to demonstrate that the subpoenaed documents and testimony were reasonably necessary to Bella Mente's defense of its case.
- The subpoenaed documents and testimony are protected by Student's right of privacy.
- The information in the subpoenaed documents and testimony is more prejudicial than probative.

Bella Mente contends the subpoenaed Sheriff's Department records, and Detective Johnson's testimony, seek the results of the Sheriff's Department's

investigation of Student's alleged threats in October 2022, including the results of an interview of Student and a search of Student's home conducted after the Sheriff's Department referred him to the psychiatric emergency response team and Student was taken into temporary custody for assessment, evaluation, and crisis intervention. (Welfare and Institutions Code, section 5150.) Bella Mente contends this evidence will support Bella Mente's manifestation determination by showing that Student's alleged October 2022 threats to commit a school shooting were not isolated, impulsive statements, but were instead expressions of a premeditated plan that included a written plan, a list of target persons, available weapons, and drawings of people holding weapons, labeled gun parts, and a human figure with body parts labeled and weapons placed next to the body. Belle Mente contends the subpoenaed records and testimony are reasonably necessary to defend its determination that Student's alleged threats were not a manifestation of his disability, or a direct result of Bella Mente's failure to implement Student's IEP.

Bella Mente further contends:

- Bella Mente has not subpoenaed juvenile case files, and the rules applicable to juvenile case files do not apply here.
- Bella Mente's request for documents from October 1, 2020 to the present was a typographical error, and Bella Mente seeks only documents from October 1, 2022 to the present.
- Bella Mente is not seeking public disclosure of Student' records, and Government Code section 6254, subdivision (k) does not apply.
- Student's right of privacy in the Sheriff's Department records of its investigation of Student is not absolute, and was waived by Student's

complaint challenging Bella Mente's manifestation determination, and the complaint's characterization of the Sheriff's Department's investigation as an alleged investigation. 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 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.

## SCOPE OF SUBPOENA DUCES TECUM AND REASONABLE NECESSITY FOR THE RECORDS

Belle Mente admits that its subpoena duces tecum included a typographic error demanding the Sheriff's Department produce its records relating to Student from October 1, 2020 to the present, instead of from October 1, 2022 to the present. This error could be corrected by OAH modifying Bella Mente's subpoena to request records only from October 1, 2022 to the present.

Bella Mente's declaration of necessity is a sufficient factual showing of why the requested Sheriff's department records are material and relevant to the issue of whether Student's alleged threats to commit a school shooting were a manifestation of his disability, or part of a premeditated plan that Bella Mente contends was not a manifestation of Student's disability.

## UPLOADING DOCUMENTS TO OAH'S CASE CENTER SYSTEM DOES NOT CONSTITUTE PREHEARING DISCOVERY

The right to prehearing discovery in due process proceedings under the IDEA 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).)

Other than these exceptions, the parties in due process proceedings are entitled to obtain evidence only at hearing. 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. Subpoenas duces tecum are authorized in special education hearings, but their use must be consistent with the legislative and regulatory framework of these proceedings.

OAH's subpoena duces tecum form directs the subpoenaed party to upload documents to OAH's Case Center electronic evidence management system at least five business days before the day the documents are required. The subpoena form emphasizes the documents should not be sent to the party requesting them. Parties are not given access to subpoenaed documents uploaded to Case Center until after the start of the due process hearing.

The OAH subpoena form includes a box to be filled in by the subpoenaing party, described as, "Date Documents Or Things Required." The date entered should be no earlier than the first day of the due process hearing. In this instance, Bella Mente entered the date five days before the hearing, instead of the date of the hearing itself. This error could be corrected by OAH modifying the subpoena's Date Documents Or Things Required to the hearing's starting date of January 10, 2023. In no instance would

OAH have given Bella Mente access to the subpoenaed Sheriff's Department records before the start of the hearing.

## JUVENILE POLICE RECORDS AND INFORMATION

Bella Mente's request for Sheriff's Department records and information relating to Student is not a request for juvenile case files that is governed by the procedures in California Rules of Court, rule 5.552(a) through (e), and Welfare and Institutions Code, section 827. Per the filings of the parties, the Sheriff's Department has submitted its records to the District Attorney's Office for potential prosecution, but no juvenile court case is pending. (See, definition of juvenile case files, Cal. Rules of Court, rule 5.552(a).)

Requests for records and information from law enforcement agencies relating to juveniles for whom no juvenile court case is pending are governed by the procedures in California Rules of Court, rule 5.552(f) and Welfare and Institutions Code, section 828. Rule 5.552(f) provides that persons seeking to inspect or obtain information gathered and retained by a law enforcement agency regarding the taking of a child into custody must petition the juvenile court for authorization using Petition to Obtain Report of Law Enforcement Agency (form JV-575), except as authorized under Section 828. Section 828, subdivision (a)(1), provides that, except as provided in Welfare and Institutions Code section 827.9 and other statutes not relevant here, any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for purposes of official disposition of a case.

Section 828 does not specify the procedures governing such disclosure. Section 827.9 does. Section 827.9 provides that a juvenile police record, defined as records or

information relating to the taking of a minor into custody, temporary custody, or detention, may be disclosed without notice or consent from the person who is the subject of the juvenile police record to certain specified persons or entities including school district police. (Welf. & Inst. Code, § 827.9, subd. (b)(2).) Subject to certain exceptions not applicable here, law enforcement agencies are also required to release copies of juvenile police records to any other person designated by court order based upon the filing of a Petition to Obtain Report of Law Enforcement Agency with the presiding judge of the juvenile court in the county where the juvenile police record is maintained. (Welf. & Inst. Code, § 827.9, subd. (e).) Section 827.9 does not authorize the release of juvenile police records or information to school district attorneys, or representatives other than school district police, without a court order based upon the filing of a Petition to Obtain Report of Law Enforcement Agency (form JV-575).

California Rules of Court, rule 5.552(f), and Welfare and Institutions Code, sections 827.9 and 828, require Bella Mente to file a Petition to Obtain Report of Law Enforcement Agency (form JV-575) with the San Diego County juvenile court to obtain Student's juvenile police records and information from the San Diego County Sheriff's Department. Bella Mente did not file such a petition. OAH does not have jurisdiction either to require the Sheriff's Department to release its records regarding Student, or to require Detective Johnson to testify at hearing regarding the information obtained by the Sheriff's Department regarding Student.

Student's motion to quash is granted. Bella Mente's subpoena duces tecum directed to San Diego Sheriff's Department Detective Amanda Johnson is quashed in its entirety.

IT IS SO ORDERED.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings