BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019101198

ORDER DENYING MOTION TO QUASH SUBPOENA

On October 30, 2019, Student filed a request for due process naming Upland Unified School District. On October 30, 2019, a scheduling order was issued scheduling the case for hearing on January 2, 2020.

On or about December 6, 2019, Upland issued a subpoena duces tecum, which is the subject of this motion to quash.

On December 13, 2019, Student filed a motion to quash the subpoena on various grounds including lack of reasonable necessity for the requested information, and arguing that it seeks pre-hearing discovery. Student did not provide a copy of the actual subpoena. On December 16, 2019, Upland opposed the motion to quash, making various arguments about the contents of the subpoena, its timing, and the categories of documents it seeks, but without supplying the actual subpoena.

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.

Here, the motion to quash is denied without prejudice. The motion may be brought again, attaching the copy of the actual subpoena at issue, such that its contents and the parties' arguments may be addressed.

IT IS SO ORDERED.

DATED: December 16, 2019

DocuSigned by:
June Lehrman
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June Lehrman
Administrative Law Judge
Office of Administrative Hearings