BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024100754

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM

MARCH 26, 2025

On October 21, 2024, Student filed a due process complaint naming San Diego Unified School District as respondent. On November 25, 2024, the Office of Administrative Hearings, called OAH, granted the parties' request to set a mediation and continue the due process hearing.

On February 10, 2025, OAH granted Student's motion to amend his due process complaint and deemed Student's first amended complaint filed. That Order reset the applicable due process timelines as February 10, 2025, the date OAH deemed Student's first amended complaint filed. (20 U.S.C. §1415(c)(2)(E)(ii).)

On March 12, 2025, San Diego issued subpoenas duces tecum on Connect4Kids Psychological Services and Rancho Coastal Speech Therapy. San Diego sent a notice to consumer to Student advising Student of the subpoenas directed to both Connect4Kids Psychological Services and Rancho Coastal Speech Therapy. San Diego sent copies of the subpoenas to Student along with the notice to consumer.

The subpoenas to Connect4Kids Psychological Services and Rancho Coastal Speech Therapy sought documents related to independent educational evaluations conducted by Connect4Kids Psychological Services during the summer and fall of 2024 and by Rancho Coastal Speech Therapy during the spring of 2024, including:

- interview notes,
- observation notes,
- educational and attendance records,
- testing protocols,
- correspondence, and
- draft assessment reports.

The subpoenas required Connect4Kids Psychological Services and Rancho Coastal Speech Therapy to comply by April 2, 2025, the first day of the due process hearing as of the day San Diego issued the subpoenas.

On March 12, 2025, San Diego filed a request to continue the due process hearing to April 22, through 24, 2025. OAH granted that motion on March 20, 2025.

On March 17, 2025, Student filed a motion to quash the subpoenas on the grounds that the material San Diego requested was not material to its case, and that the subpoenas were overbroad and sought discovery that is impermissible under special education law. On March 20, 2025, San Diego opposed the motion arguing that San

Diego had demonstrated reasonable necessity for the records sought and was not engaging in impermissible discovery.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities 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).)

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.

SAN DIEGO DEMONSTRATED REASONABLE NECESSITY FOR THE RECORDS

Student argues that the subpoenas duces tecum should be quashed because they fail to make the requisite showing of reasonable necessity for the requested documents with a statement of facts showing the material and relevant information

sought. San Diego argues that the documents it requested are reasonably necessary for its defense.

San Diego's declaration in support of the subpoenas state that the requested records are reasonably necessary for San Diego to mount a defense to Student's claims. San Diego argues the independent educational evaluations conducted by Connect4Kids Psychological Services and Rancho Coastal Speech Therapy are central to Student's claims. San Diego argues that the requested documents are necessary to fully understand the independent educational evaluations reports, including changes in recommendations, the basis for the reports' findings, and evaluating the reliability of the reports' results.

San Diego also argues that the requested documents are necessary to effectively cross examine the independent assessors, who San Diego believes Student will call as witnesses in his case. San Diego lastly argues that it has no other way of acquiring these records other than through a subpoena. San Diego specifically noted that it had requested testing protocols from Rancho Coastal Speech Therapy without a subpoena and had not yet been provided with those documents.

Student relies on *McClatchy Newspapers v. Superior Court of Sacramento* (1945) 26 Cal. 2d 386 in support of his argument. Student argues that an affidavit in support of a subpoena duces tecum "must identify the desired books, papers and documents and it must clearly show that they contain competent and admissible evidence which is material to the issues to be tried." (*Id.* at p. 396.) However, Student did not demonstrate how *McClatchy Newspapers, supra*, 26 Cal. 2d 386, which predates the IDEA and corresponding California law, is applicable to special education due process hearings, or the subpoenas authorized under those proceedings. (Cal. Code Regs., tit. 5, § 3082.)

Student's claims center around San Diego's failure to find Student eligible for special education and failure to consider the independent educational evaluations conducted through Connect4Kids Psychological Services and Rancho Coastal Speech Therapy. San Diego tailored its subpoena duces tecum to records supporting and comprising the assessments and subsequent reports. The reasonable necessity standard does not require a party to a due process hearing to demonstrate, clearly, that the documents sought contain competent and admissible evidence, material to the issues to be tried. Rather, San Diego must, and has, demonstrated that, on its face, the requested documents are material and relevant to the issues stated in Student's first amended complaint. Whether the documents will ultimately be found admissible at hearing is a matter for the hearing ALJ to determine on a document-by-document basis.

Student's arguments that San Diego did not demonstrate reasonable necessity for the requested records are not persuasive. Rather, San Diego's subpoenas demonstrated reasonable necessity for the records sought. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Therefore, Student's motion to quash is denied.

SAN DIEGO'S SUBPOENAS ARE NOT OVERBROAD

Student contends that the subpoenas are overly broad as the subpoenas request documents broad categories, which Student describes as a "fishing expedition." Student also raised a vague argument regarding "serious concerns about privilege and confidentiality." However, Student did not assert any specific privilege regarding any of the documents sought. Student's arguments are not persuasive.

Student's allegations assert that San Diego failed to provide him a FAPE during the 2023-2024 and 2024-2025 school years. San Diego's subpoenas seek documents within the same timeframe. San Diego's subpoenas are narrowly tailored to seek

records related to two specific independent educational evaluations, which Student, pursuant to allegations in his first amended complaint, intends to use to support his case. San Diego's subpoenas to Connect4Kids Psychological Services and Rancho Coastal Speech Therapy are not overbroad.

SAN DIEGO'S SUBPOENAS DO NOT SEEK PREHEARING DISCOVERY

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. (20 U.S.C. § 1400 et seq.) Rather, 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 five business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

The issued subpoenas do not seek prehearing discovery. They were issued to give adequate notice to produce documents and complied with the required notice to consumer. The subpoenas directed Connect4Kids Psychological Services and Rancho Coastal Speech Therapy to produce the documents to Case Center on April 2, 2025, the first day of hearing at the time San Diego issued the subpoenas. OAH does not allow the parties to seek subpoenaed documents before the first day of hearing.

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. Therefore, the subpoena is modified to change the date of production to April 15, 2025, the current first date of hearing. The documents would not be released to either party, in any event, until and only if the hearing proceeds. Connect4Kids Psychological Services and Rancho Coastal Speech Therapy shall upload the documents to Case Center pursuant to the terms included in their respective subpoenas.

ORDER

1. Student's motion to quash San Diego's subpoenas duces tecum to Connect4Kids Psychological Services and Rancho Coastal Speech Therapy is denied.

2. San Diego's subpoenas duces tecum to Connect4Kids Psychological Services and Rancho Coastal Speech Therapy are modified to change the date of production of the documents to the first day of hearing, presently April 15, 2025.
3. Connect4Kids Psychological Services and Rancho Coastal Speech Therapy shall produce the requested documents to the Administrative Law Judge by uploading them to Case Center pursuant to the instructions included on their respective subpoena duces tecum issued by San Diego.
4. San Diego shall immediately upload complete copies of the subpoenas duces tecum issued to Connect4Kids Psychological Services and Rancho Coastal Speech Therapy to facilitate OAH's issuance of Case Center invitations for to Connect4Kids Psychological Services and Rancho Coastal Speech Therapy to upload the requested documents.
5. San Diego shall immediately serve a copy of this Order on to Connect4Kids Psychological Services and Rancho Coastal Speech Therapy.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings