BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025020668

ORDER GRANTING MOTION TO QUASH THE SUBPOENAS OF KENNETHA STEVENS AND MICHELLE RODRIGUEZ

APRIL 1, 2025

On February 20, 2025, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Stockton Unified School District, called Stockton. On February 20, 2025, OAH issued a scheduling order with hearing scheduled to proceed on April 8, 9, and 10, 2025.

On March 13, 2025, Student issued subpoenas to Kennetha Stevens, Stockton's Governing Board President, and Michelle Rodriguez, Stockton's Superintendent, to testify and produce documents on April 8, 2025. Both subpoenas sought the following categories of testimony and documents:

- Emails and other written communications from December 1, 2024, until March 11, 2025, concerning [Stockton']s refusal to send the agreed-upon settlement agreement signed by Parent to the school board for approval.
- Emails and other written communications from December 1, 2024, until March 11, 2025, concerning the settlement agreement signed by Parent on December 15, 2024.

To support the subpoenas, Student's attorney concluded the testimony and documents sought from both Stevens and Rodriguez were necessary and relevant because of witness credibility, impeachment/rebuttal evidence, and Stockton's failure to comply with the terms of the settlement agreement between the parties that resulted in a denial of FAPE, the only issue in this case.

On March 26, 2025, Stockton filed a motion to quash the subpoenas of Stevens and Rodriguez on the grounds that Student failed to show the subpoena was reasonably necessary. Stockton's attorney, Anne Sherlock, also represented in a declaration under the penalty of perjury that neither Stevens, nor Rodriguez, had any responsive documents.

On March 28, 2025, Student opposed the motion arguing:

- Stockton did not attach a copy of the subpoenas to the motions;
- Attorney Sherlock's declaration was that Stevens and Rodriguez did not have responsive documents was self-serving hearsay and failed to meet Stockton's burden on the motions to quash by not including declarations from Stevens and Rodriguez stating they did not have responsive documents; and

- Rodriguez's and Stevens' testimony were relevant to Stockton's policies and procedures regarding settlement agreements being sent to the school board for approval and why Stockton did not send the settlement agreement at issue to the school board for approval.

A party to a due process hearing under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), or IDEA, has the right to present evidence and compel the attendance of witnesses in a special education due process hearing. (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 documents or papers 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.

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 special education due process hearing. (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).)

Education records under the IDEA are defined by the Family Educational Rights and Privacy Act, called FERPA, to include "records, files, documents, and other materials" that "(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 300.611(b).) Pupil or education records do not include "records of instructional, supervisory, and administrative personnel . . . [ ] . . . which are in the sole possession of the maker thereof

and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

The United States Supreme Court in *Owasso Ind. School District v. Falvo* (2002) 534 U.S. 426 (*Falvo*) after conducting an analysis of FERPA provisions related to education records, determined that not every record relating to a student satisfies the FERPA definition of "education records." Specifically, the Supreme Court examined the FERPA provision that requires educational institutions to "maintain a record, kept with the education records of each student" (i.e., 20 U.S.C. § 1232g(b)(4)(A)), that "list[s] those who have requested access to a student's education records and their reasons for doing so." (*Falvo, supra,* 534 U.S. at p. 434.) The Court concluded that because this single record must be kept with the education records, "Congress contemplated that education records would be kept in one place with a single record of access." (*Id.*) The Court further concluded that "[b]y describing a 'school official' and 'his assistants' as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar…" (*Id.* at pp. 434-435.)

In *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, when determining whether or not an investigative report was an education record, citing *Falvo*, the Court of Appeal stated that "the statute was directed at institutional records maintained in the normal course of business by a single, central custodian of the school. Typical of such records would be registration forms, class schedules, grade transcripts, discipline reports, and the like." (*Id.* at pp. 751-754.) The Court of Appeal found that the investigative report, "which was not directly related to the private educational interests of the student," was not an education record, because "the report was not something regularly done in the normal course of business," and "was not the type of report

regularly maintained in a central location along with education records…in separate files for each student." (*Id.* at p. 755.)

In *S.A. ex rel. L.A. v. Tulare County Office of Education* (E.D.Cal. Sept. 24, 2009, No. CV F 08–1215 LJO GSA) 2009 WL 3126322, aff'd. *S.A. v. Tulare County Office of Education* (E.D.Cal. October 6, 2009, No. CV F 08-1215 LJO GSA.) 2009 WL 3296653, the district court found that documents such as school district emails concerning or personally identifying a student that had not been placed in his permanent file were not educational records as defined under FERPA. The court, citing *Falvo*, stated that Congress contemplated that educational records be kept in one place with a single record of access to those records. Because the emails student requested had not been placed in his permanent file and were therefore not "maintained" by the school district, the emails were not educational records and the school district was therefore not required to produce them under a request for student records under the IDEA. (2009 WL 3126322, at p. 7.)

In *Burnett v. San Mateo Foster City School District, supra,* relying on *Falvo,* the Ninth Circuit Court of Appeals affirmed the district court's determination that the school district was not required to turn over emails that were not "maintained" in a physical folder or secure electronic data base. (739 Fed. Appx. at p. 873.) "The Supreme Court has interpreted the word 'maintain' in FERPA as 'to keep in existence or continuance; preserve; retain' and reasoned that '[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database.'" (*Ibid.*, quoting *Falvo*, 534 U.S. 426, 432-433.)

REASONABLE NECESSITY FOR THE RECORDS

The subpoena to Stevens and Rodriguez were defective because Student failed to make the requisite showing of reasonable necessity for Stevens' and Rodriguez's testimony and/or to produce the two categories of documents requested. The declarations attached to the subpoena were conclusory and fell far short of demonstrating any valid basis for requiring either witness to appear for testimony and/or produce each of the requested category of documents. Student conclusory statements the documents sought related to Stockton's failure to comply with the terms of the settlement agreement, witness credibility and/or impeachment or rebuttal are insufficient to demonstrate "reasonable necessity" absent a more particularized showing for Stevens' and Rodriguez's testimony and for the two categories of documents requested.

Student's explanations in the opposition that each of Rodriguez's and Stevens' testimony was relevant to the issue in this case did not cure the defective subpoenas. As detailed above, a particularized showing of reasonable necessity is required to support valid subpoenas in special education cases. Explanations for reasonable necessity should have been included in the declarations served with the subpoenas. The declarations served with the subpoenas issued by Student failed to make the requisite showing of reasonable necessity for the requested testimony and documents sought. As such, Student's subpoenas to Stevens and Rodriguez are defective and cannot be modified to effectuate compliance. Because the subpoenas are defective, Student's arguments that Stockton was required to include a copy of the subpoenas in its motion to quash and Stockton failed to include declarations from Stevens and Rodriguez that they did not have responsive documents are therefore moot.

The motion to quash Stevens' and Rodriguez's subpoenas is granted in its entirety.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings