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 2024090930

ORDER GRANTING MOTION TO QUASH SUBPOENA IN PART

JANUARY 24, 2025

On September 25, 2024, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District, called San Diego. On October 28, 2024, OAH granted the parties' request for a due process hearing continuance and set the prehearing conference for January 17, 2024, and the due process hearing to begin on January 27, 2025. The undersigned administrative law judge is called the ALJ.

On or about January 13, 2025, Student served a subpoena duces tecum on Angelia Watkins, who is apparently San Deigo's custodian of student records. The subpoena demanded the production of an extensive range of records.

The subpoena was issued one day before the deadline for San Deigo to timely file a motion to quash the subpoena in compliance with OAH rules for prehearing motions. San Diego filed the motion to quash the subpoena on January 16, 2025. The ALJ waived the requirement to timely file the motion to quash the subpoena, given the date the subpoena was issued.

The ALJ allowed the parties to be heard on the motion to quash at the prehearing conference. Student also requested time to file written opposition after the prehearing conference. The ALJ granted Student's request. The ALJ ordered Student to file the opposition within three business days of January 16, 2025, the date the motion to quash was filed. On January 21, 2025, Student filed opposition to the San Diego's motion to quash the 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).)

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.

DISCUSSION

Student's subpoena issued to Angelia Watkins seeks the following documents: Student requests records as specified below, "including but not limited to:

A. Written and electronic records, emails, and protocols held by San Diego Unified School District ("District") from the time of February 24, 2023, through January 18, 2025;

B. Email correspondence, letters, text messages, and communication logs regarding [Student], [Father], and [Mother] (each individually "Parent," together "Parents") by name, initials, or identification number;

C. District instructions/policies to IEP teams regarding offers of FAPE to current Parentally Placed Private School Students;"

San Diego's motion seeks to quash Student's subpoena on the grounds that the subpoena failed to establish reasonable necessity, is overly broad, untimely, and failed to include a notice to consumer. Student opposed the motion to quash arguing that it complied with OAH procedures, but alternatively conceded that the subpoena could be modified.

The ALJ finds that Student's subpoena is overly broad, seeks unrelated student records, and lacks reasonable necessity as to some of the requested records. Thus, the ALJ modifies Student's subpoena as discussed in more detail below.

1. STUDENT FAILED TO ESTABLISH REASONABLE NECESSITY, IN PART.

San Diego asserts the subpoena should be quashed because it failed to make the requisite showing of reasonable necessity for the requested documents as the

documents are not necessary to try any of Student's issues. Student disagrees and argues that the records requested are material and relevant to prove Student's case.

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.)

Student's due process hearing request alleged seven issues, specifically, that San Diego denied Student a free appropriate public education, called FAPE, during the 2023-2024 school year by:

1. failing to consider the full continuum of placement options;

2. failing to offer appropriate specialized academic instruction, including executive functioning; social skills; and mental health;
3. failing to offer an appropriate placement;
4. failing to consider Dr. Gray's independent educational evaluation;
5. predetermining Student's placement;
6. failing to offer an appropriate transition plan, and
7. failing to allow parental participation at the May 8, 2024 individualized education program, called IEP, team meeting.

The declaration in support of Student's subpoena states that all the documents requested are material to the due process hearing because they contain information relevant to the events alleged in the complaint. Specifically the declaration contends that Student's subpoena requests A and B are not part of Student's educational records but are material in determining Student Issues 2, 4, and 5. Namely, the requested documents are necessary to see what San Diego knew about the severity of Student's needs for special education services, to determine the lack of substantive consideration of Dr. Grays's independent educational evaluation, and to show predetermination of Student's educational placement during the 2023-2024 school year.

As to Student's subpoena request C, the declaration maintains that the documents were not fully provided as part of Student's educational records but are relevant and material for Student's issues in determining predetermination and parental participation, Student's Issues 5 and 7. Student further maintains that any San Diego policies or instructions provided to IEP teams regarding parentally privately placed student's would assist in determining whether the placement decision in this matter was predetermined.

San Diego argues that all of Student's issues fail to meet the requisite reasonable necessity requirement, despite the declaration in support of Watkins subpoena duces tecum request. Regarding Student's Issues 1, 4, and 7, the consideration of the continuum of placements options, consideration of Dr. Gray's independent education evaluation, and parental participation, respectively, San Diego maintains that these issues relate exclusively to discussions occurring at the IEP team meetings during the 2023-2024 school year. Thus, San Diego asserts the requested documents are not reasonably necessary to prove these issues.

As to Student's Issues 2, 3, and 6, whether San Diego failed to offer appropriate services, placement, and a transition plan, San Diego contends these issues relate exclusively to the IEP contents that IEP teams developed and offered at the various IEP team meetings during the 2023-2024 school year. Thus, San Diego maintains the requested documents are not reasonably necessary to prove these issues.

As to Student's Issue 5, predetermination, San Diego concedes that this may relate to activities that occur outside of IEP team meetings. However, San Diego argues that the legal analysis for predetermination requires a finding of what occurred during the IEP team meeting. Thus, the requested documents do not meet the requisite reasonable necessity showing.

Here, the declaration in support Student's subpoena duces tecum failed to set forth any facts or argument related to relevance, materiality, or reasonably necessity of Student's Issues 1, 3, and 6 subpoena document requests. Thus, Student failed to make the requisite reasonable necessity showing as to San Diego's failure to consider the continuum of placement options, offer an appropriate placement, and offer an appropriate transition plan.

As to Student's Issues 4 and 7 regarding the consideration of Dr. Gray's independent education evaluation, and impeding Parents' participation at the May 8, 2024 IEP team meeting, Student failed to make the requisite factual showing as to reasonable necessity. Regarding Student's Issue 4, the law states when presented with a private expert's report, a school district must consider the results of the assessment in any decision made with respect to the provision of FAPE to the student. (34 C.F.R. § 300.502(c)(1) (2006); Ed. Code, § 56329, subd. (c).) Thus, any written and electronic records, emails, protocols, letters, text messages, or communication logs are not material or necessary to make this determination. As well, the determination of this issue also does not require the instructions or policies to IEP teams regarding specific offers of FAPE to parentally placed private school students, not Student. Rather, it requires evidence and testimony of what occurred at the IEP team meetings at issue. Student failed to meet the requisite reasonable necessity showing for the requested documents regarding Student's Issue 4.

The same reasoning applies to Student's Issue 7, impeding parental participation at the May 2024 IEP team meeting. The law states that the parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(a) & (b) (2006); Ed. Code, §§ 56500.4, 56341, subd. (b), 56341.5, subds. (a) & (b).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Education,* (3rd Cir. 1993) 993 F.2d 1031,1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

A determination of Parent's meaningful participation at the May 2024 IEP team meeting requires an analysis of the evidence of what occurred at that IEP team meeting. Student failed to cite how written and electronic records, emails, protocols, text messages, communication logs, or San Diego instructions or policies regarding offers of FAPE to current parentally placed private school students is required to prove that San Diego impeded Parents' right to meaningful participation at the May 8, 2024 IEP team meeting. Student argued that the documents are needed to determine predetermination which in turn relates to parents' participation at the May 2024 IEP team meeting. While predetermination may infringe on parental participation in the IEP process, the requested documents by Student are not necessary to make the determination regarding parental participation alone. Thus, Student failed to meet the requisite reasonable necessity for the requested documents related to Student's issue 7.

Regarding Student's Issue Five, predetermination of Student's placement, the law states school officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schools, supra,* 315 F.3d 688 at p. 693, fn. 3.) A school district's IEP team members also may form opinions before IEP meetings. However, if a school district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action," this amounts to predetermination. (*P.C. v. Milford Exempted Village Schools* (S.D. Ohio, Jan. 17, 2013, No. 1:11- CV-398) 2013 WL 209478, p.7.) Thus, some of Student's requested documents in Student's subpoena requests A, B, and C may be reasonably necessary to prove predetermination. However, instructions to other student IEP team meetings regarding FAPE offers of parentally placed privately school student is neither material nor relevant to this determination. Protocols and communication logs are also not reasonably necessary to this analysis. And documents unrelated to Student do not meet the reasonably necessity requirement.

Regarding Student's Issue Two, the question of whether San Diego offered appropriate specialized academic instruction, including executive functioning; social skills, and mental health requires Student to prove that San Diego's offer in these categories during the 2023-2024 school year were not reasonably calculated to confer educational benefit based on Student's unique circumstances. (*Endrew F. v. Douglas County Sch.* Dist. RE-1 (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].) This requires a showing of what San Diego knew of Student's needs at the time of the IEP offers and its knowledge before the offers was made. Thus, electronic records, emails, letters, text messages or communication logs related to this issue may be reasonably necessary. However, this analysis does not necessitate knowledge of protocols, or instructions and policies at IEP team meetings to currently parentally placed private school students. It is also not reasonably necessary to produce documents of other students.

The requested timeframe for Student's subpoena request A, and unlimited timeframe of Student's subpoena requests B and C are not reasonably necessary and will be discussed in more detail below. Accordingly, Student's document requests will be modified to include only reasonably necessary documents related to Student's Issues 2 and 5, as discussed.

2. STUDENT'S SUBPOENA REQUESTS ARE OVERLY BROAD.

San Deigo asserts that the subpoena is overly broad as to time and subject. Student concedes some of San Diego's arguments but argues that the subpoena can be modified.

Code of Civil Procedure section 1985, subdivision b, requires a "showing of good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced." In evaluating a motion

to quash, the court should consider various factors, including whether the "sought material [is] adequately described and not overly broad." (*Facebook, Inc. v. Superior Court of San Diego County* (2020) 10 Cal.5th 329, 347 (citing *City of Alhambra v. Superior Court* (1988) 205 Cal.App.3d 1556D, 1134, modified (Dec. 1, 1988)).)

Student's request uses the language "including but not limited to." This language alone makes Student's subpoena request overly broad.

Student's request A seeks written and electronic records, emails, and protocols held by San Diego from February 24, 2023, through January 18, 2025. This request is not confined to Student, fails to narrow the scope to a specific subject, issue, or persons, could potentially disclose other student information, and lacks any meaningful specificity regarding the documents sought. Instead, it broadly encompasses an extensive range of records, including potentially vast amount of irrelevant information. Furthermore, the requested timeframe exceeds the relevant period in this matter. The timeframe also predates an executed settlement agreement between the parties. As such, Student's request A is overly broad and improper.

In Student's opposition, Student argued that the intent was to only request Student documents, and agreed to narrow the scope of request A to those pertaining to Student and Parents. Student also agreed to narrow the timeframe to February 24, 2023, through May 8, 2024. Later in Student's opposition, Student argued that if the timeframe was still too broad, the ALJ should consider narrowing the start time closed to November 15, 2023, due to the waiver of claims in a prior settlement between the parties.

The parties agree that they entered into a settlement agreement on September7, 2023, and waived claims through November 30, 2023. Student contends

the waiver carved out claims related to agreed upon assessments, and subsequent IEP team meetings. San Diego is silent as to any waiver carve outs. Student failed to establish through any factual showing the significance of documents before the settlement agreement date of September 7, 2023. Thus, despite Student's concessions and considering them, Student's subpoena continues to be overly broad.

Student's subpoena request B seeks email correspondence, letters, text messages, and communication logs regarding Student and Parents. Yet, Student failed to set forth any timeframe. Student also did not narrow the scope to subject or issue. The request lacks any meaningful specificity and could result in massive amounts of unrelated and irrelevant documents over an unspecified time. While Student argues that the request is not overly broad except as to time, Student's subpoena request B is plainly overly broad and improper.

Student's subpoena request C seeks San Diego instructions and policies to IEP teams regarding offers of FAPE to current parentally placed private school students. This request is not limited to any timeframe. It does not limit the request to only Student but could potentially disclose other student information including their placements and FAPE offers. Student further Student's subpoena request C is not overly broad except as to time. However, despite this concession, Student's subpoena request C is overly broad and improper.

Accordingly, Student's documents requests A, B, C, are overly broad and improper as described. The ALJ will modify the subpoena as to time and scope as described below.

3. STUDENT FAILED TO SERVE A CONSUMER NOTICE.

San Deigo asserts that the subpoena at issue seeks personal records, and no notice of consumer was served. Student maintains that the documents sought do not constitute personal records and therefore a notice of consumer was not required.

California law requires that a Notice to Consumer be served on the subject of a subpoena for personal records not less than 10 days before the date for production of records plus the additional time required based on the method of service per Code of Civil Procedure section 1013. (Code Civ. Proc., § 1985.3, subd. (b).) Personal records are those records, whether maintained on paper or electronically, that are sought from those providing personal service to a party such as health care providers, psychiatrists, bankers, pharmacists, laboratories, insurance companies, telephone service providers and schools to name a few. (Code Civ. Proc., § 1985.3, subd. (a)(1).) The proof of service of the notice to consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).) Failing to follow this notification process allows the witness to decline release of the consumer personal records. (Code Civ. Proc., § 1985.3, subd. k.)

OAH states "There is a special notice, called a Notice to Consumer, that must accompany a subpoena for private records such as medical and other healthcare records, school records, employment records and other." (Special Rules for Subpoenaing Private Documents, OAH Subpoena Form, p.6.)

San Diego argues that Student's requests A and C both contemplate disclosure of student private records, other than Student. Student's request A is not restricted to Student. Student's request C seeks San Diego "instructions/policies to IEP teams regarding offers of FAPE to current Parentally Placed Prive School Student." San Diego

maintains that on its face, these requests could constitute student records, as they contain information related to San Deigo students and are maintained by San Diego. Yet, no notice to consumer was provided to San Diego students. The ALJ agrees.

San Diego also asserts that the subpoena was untimely because under OAH subpoena instructions for private records, the notice must give the responding party at least 20 days from the date it is signed by the ALJ or attorney, or 15 days from the date the subpoena was served, whichever gives the respondent more time, to produce the documents. (Special Rules for Subpoenaing Private Documents, OAH Subpoena Form, p.6.).

Student argued in its opposition that it is not requesting the private information of other students. However, Student's subpoena requests A and C clearly contemplate disclosure of student records other than Student. Thus, a notice to consumer should have been served. Because of this, the subpoena is untimely with respect to a request for personal records for individuals other than Student. Accordingly, Student's subpoena is quashed with respect to any personal consumer records, including student records, other than Student.

4. STUDENT GAVE SUFFICIENT NOTICE TO COMPLY WITH THE SUBPOENA AS MODIFIED BY THE ADMINISTRATIVE LAW JUDGE.

San Diego asserts that the subpoena was untimely. Student disagrees.

California Code of Civil Procedure section 1985.3, subdivision (d), states that service of a subpoena dues tecum must be made "in sufficient time to allow the witness reasonable time to locate and produce the records or copies thereof." Code of Civil Procedure section 2020.410, subdivision (c) defines sufficient time as "no earlier than 20 days of the issuance, or 15 days after the service" of the subpoena, whichever is later.

OAH states "[A] subpoena must be served far enough in advance of the hearing to give the person being subpoenaed a reasonable amount of notice. The person receiving the subpoena is asked to submit documents to OAH five business days prior to the first day of the hearing." "At the time of the prehearing conference, parties may be asked if there are any documents expected pursuant to subpoena so the ALJ can issue an invitation to upload the documents for ALJ review." (When To Serve A Subpoena, OAH Subpoena Form, p.7.).

Student issued the subpoena on January 13, 2025. San Diego argues that this is not a reasonable amount of notice because the subpoena also directed Watkins to submit the documents to OAH's Case Center five business days before the hearing, which is January 21, 2025, leaving eight days to investigate, gather, and upload documents. San Diego further argues that San Diego may be asked to produce documents at the prehearing conference on January 17, 2025, only four days from the subpoena issuance.

Nowhere in the OAH form does it state that a school district may be asked to produce documents at the prehearing conference. San Diego's argument regarding this point is factually wrong and baseless.

San Diego's argument that by uploading the documents to Case Center five business days before the hearing cuts off the time to investigate, gather, and produce the documents, is well-taken under these facts. The subpoena is modified to change the date to upload the documents to Case Center to the first hearing day, January 28, 2025. Given the ALJ's modification to the document upload to Case Center, Student's subpoena gave San Diego reasonable notice.

ORDER

1. San Diego's motion to quash Student's subpoena duces tecum request issued to Angelia Watkins is granted in part and thus modified as follows.
   A. Angelia Watkins must produce any written and electronic documents regarding Student; created or received by any of Student's 2023-2024 San Diego IEP team members during the period of September 8, 2023, through May 8, 2024; related to San Diego educational placement offers to Student. This does not include any privileged documents. This does not include any informal notes that remain in the sole possession of the maker, and used only as a personal memory aid, and are not accessible or revealed to any other person. This does not include documents already produced by San Diego.
   B. Angelia Watkins must produce any written and electronic documents regarding Student; created or received by any of Student's 2023-2024 San Diego teachers, service providers, and assessors, during the period of September 8, 2023, through May 8, 2024; related to Student's needs and services, in the areas of specialized academic instruction including executive functioning, socials skills, and mental health. This does not include any privileged documents. This does not include any informal notes that remain in the sole possession of the maker, and used only as a personal memory aid, and are not accessible or revealed to any other person. This does not include documents already produced by San Diego.
   C. Angelia Watkins must produce any San Diego policies or general instructions not specific to any student, in effect from November 15, 2023, through May 8, 2024, regarding parentally placed private school students.

2. Angelia Watkins must upload any responsive documents to Case Center on January 28, 2025. If the hearing date is continued, the date of production will be the first day of the continued hearing.

3. Student's subpoena is quashed with respect to producing any personal consumer records, including student records, other than Student.

4. Counsel for Student must immediately serve a copy of this order on Angelia Watkins.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings