BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MILL VALLEY SCHOOL DISTRICT.

OAH CASE NUMBER 2025040955

ORDER GRANTING MOTION TO QUASH SUBPOENA

SEPTEMBER 18, 2025

On April 21, 2025, Parents on behalf of Student filed a request for due process, with the Office of Administrative Hearings, called OAH, naming Mill Valley School District. On July 28, 2025, the OAH convened the prehearing conference, at which the parties made a joint request for mediation on September 2, 2025 and continuance of the hearing to September 23, 24, and 25, 2025. OAH granted the parties' request and issued a prehearing conference order continuing the hearing as requested.

On September 8, 2025, Student served Regina Fagan, Colleen Grimes, Eleanor Ryan, Shannon Parsons, Erin Conklin, Robert Celli, Erin Sheedy, Elizabeth Kaufman, Heather Sappington, and Sharon Nakatani with subpoenas duces tecum. On September 9, 2025, Mill Valley filed a motion to quash the subpoenas duces tecum Student filed opposition to the motion to quash on September 10, 2025.

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.

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (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 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

A subpoena for the production of documents must be served at least 20 days prior to the date of production. (Code Civ. Pro. § 1987(c); Gov't. Code § 11450.20. See also OAH Subpoena Duces Tecum Form, Revised 3.2024, "Instructions for Party Requesting a Subpoena.")

DISCUSSION AND ANALYSIS

Student's subpoenas duces tecum directs the subpoenaed persons to produce the subpoenaed records on September 15, 2025, which is eight days prior to the first day of hearing. Student has no statutory right to pre-hearing discovery. Student's subpoenas should have been returnable on the first day of hearing, September 23, 2025. 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. Here, Student was well aware of the hearing dates, which Student asked for at the July 2025 prehearing conference. Additionally, ALJ Ashok Pathi reminded the parties, at the July 2025 prehearing conference, that prehearing discovery is not permitted in special education due process proceedings. Yet, Student improperly issued the subpoenas seeking production of documents before the commencement of hearing.

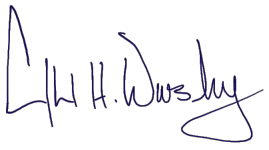
Additionally, Student's subpoenas duces tecum are untimely. Student issued the subpoena's duces tecum on September 8, 2025, only fifteen days before the due process hearing. The consequence of the subpoenas' untimely service is heightened by

the multiple categories and broad description of documents sought by Student. The subpoenas, issued to Resource Specialists Regina Fagan, Colleen Grimes, and Eleanor Ryan, to Dean of Students Rob Celli, and to School Counselor Erin Sheedy, seek fourteen subcategories of documents. The subpoena to Director of Student Services and Human Resources, Erin Conklin, seeks fifteen subcategories of documents. Similarly, the subpoenas issued to School Psychologist Shannon Parson, Superintendent Elizabeth Kaufman, Education Specialist Heather Sappington, and Board President Sharon Nakatani, seek multiple categories of documents. Considering the nature and amount of documents sought by the subpoenas, the untimely service is especially unreasonable.

Accordingly, the motion to quash Student's subpoenas duce tecum, in their entirety, is granted.

ORDER

1. Mill Valley Unified School District's motion to quash Student's subpoenas duces tecum to Regina Fagan, Colleen Grimes, Eleanor Ryan, Shannon Parsons, Erin Conklin, Robert Celli, Erin Sheedy, Elizabeth Kaufman, Heather Sappington, and Sharon Nakatani is granted. The subpoenas are quashed in their entirety.



Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings