BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010630

ORDER GRANTING, IN PART, MOTIONS TO QUASH SUBPOENAS

APRIL 25, 2024

On January 19, 2024, Student filed a request for due process naming Fresno Unified School District and Clovis Unified School District. Student filed an amended complaint on February 19, 2024. Fresno Unified was dismissed by Student on April 18, 2024.

On April 8, 2024, Student issued 45 subpoenas duces tecum on former and current employees of Clovis Unified. Each subpoena sought documents related to Student, including emails, notes, data, service records, photos, videos, audio recordings, from September 9, 2021, to present. Student also requested training records related to each individual relevant to Student's education from September 9, 2021, to present.

Clovis Unified has filed several motions to quash the subpoenas, some of which are duplicative. Despite indicating there are exhibits attached, none of the motions have exhibits.

Clovis Unified filed a motion to quash on April 16, 2024, directed at all 45 subpoenas (Motion to Quash #1). Clovis Unified filed a second motion to quash on April 16, 2024, directed at six specific witnesses (Motion to Quash #2). A third motion to quash was filed on April 19, 2024, which appears to be identical to Motion to Quash #2. On April 17, 2024, Clovis Unified filed a fourth Motion to Quash a second subpoena issued to witness Jaimie Fernandes, and then filed an amended motion addressing Ms. Fernandes on April 19, 2024 (Motion to Quash #3). These motions will be addressed this order and identified by their number.

Student has opposed the three motions to quash that are at issue in this order.

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.

MOTION TO QUASH #1

REASONABLE NECESSITY FOR THE RECORDS

Clovis Unified argues that the subpoenas duces tecum issued to the 45 witnesses should be quashed because each subpoena fails to make the requisite showing of reasonable necessity for the requested documents with a statement of facts showing the material and relevant information sought. (*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.) Clovis also argues that the subpoena requests are overbroad and burdensome. Clovis argues it will take weeks to compile each document from each subpoenaed witness. Clovis asserts that because Student did not enroll with Clovis Unified until August 22, 2022, the requests are burdensome. Clovis further argues that the requests seek business records not subject to subpoena.

Student argues that the requested documents are material and necessary to Petitioner's claim that Clovis has denied Student a free appropriate public education, referred to as FAPE. Student argues that each individualized education program, referred to as an IEP, "vaguely references" the word staff, but does not identify which staff. As such Student is seeking testimony and documents from all staff. Student also argues that the time when Student attended Clovis Unified is irrelevant because Clovis has documents generated by Fresno Unified in its possession.

Student has established that there are sufficient grounds to obtain some documents which are reasonably necessary for Student to establish his issues against Clovis Unified. However, the subpoenas are overbroad and seek information in a "shotgun" approach. No evidence is presented that all 45 witnesses will be required to testify at hearing, and whether they possess the documents in question.

Clovis Unified's motion to quash is granted in part. First—each subpoenaed witness who testifies in either Student's case or District's case shall produce responsive documents as set forth in this order no later than 1 business day before the witness testifies. As part of the ongoing requirement to meet and confer, the parties are ordered to determine which witnesses will testify and when. The process should allow Clovis Unified or each witness adequate time to collect the documents. The witnesses are not required to produce documents that are not in their possession.

Second—the documents are limited to dates from and after August 22, 2022. Because Fresno Unified is dismissed, it is immaterial if the witnesses possess documents from Fresno Unified. If Student wishes to subpoena specific documents from Fresno, he is free to do so.

Finally—the motion to quash is granted as to Category #5, which requests "[n]ames, dates and documentation of any training any CUSD staff, providers, employees, and administrators who have worked with Israel has attended or received relevant to Israel's education and/or attendance as a student from September 9, 2021, to the present" Student has not made the necessary showing that these documents are either necessary or relevant.

MOTIONS TO QUASH #2 AND #3

Clovis unified moves to quash the subpoenas for testimony issued by Student upon district employees Brittany Lee, Jaimie Fernandes, Johanna Morales, Barbara Bethel Dorr, and Alex Accardo. According to Clovis, Ms. Lee and Ms. Fernandes are both on protected medical leave and are expected to be on leave through the end of the 2023 2024 school year. Clovis also asserts that Ms. Morales, Ms. Dorr, and Ms. Accardo have not had any relevant involvement in Student's educational program. Any testimony they would provide would be irrelevant and duplicative.

Student argues that Ms. Lee was Student's case manager since August 2023, and communicated with parent whenever behavior incidents arose at school. Student asserts Ms. Lee was the person most likely to have spent time documenting Student's behavior incidents. Ms. Fernandes' testimony will be necessary to provide insight on her multiple documentations of how he works and interacts at school, and the impact of his disabilities on his education. The remaining three witnesses are relevant, according to

Student, because they provided input into Student's IEP. Student concedes that Ms. Dorr and Ms. Accardo only had Student in their classes for two days.

Clovis Unified's motion is partially granted. Regarding Ms. Fernandes and Ms. Lee, Clovis may either accept service of the subpoenas, or provide Student's counsel the last known address of each witness if these witnesses have not already been properly served. Because the hearing is held virtually, the burden on either witness appearing is lessened to a degree. OAH recognizes that maternity leave is a medically required time and should not be disturbed unreasonably, nor should the need to testify take precedence over the health of a mother or her child. As such, counsel for Clovis Unified and Student are ordered to meet and confer to determine the best time and date for testimony that will not materially interfere with either Ms. Fernandes or Ms. Lee's maternity leave. This shall include providing both witnesses sufficient breaks and limiting their testimony only to what is relevant and necessary at the hearing, subject to the determination by the hearing judge.

Regarding Ms. Morales, Ms. Dorr and Ms. Accardo, their need to testify cannot be determined in a vacuum. Student will provide an offer of proof to the hearing judge why those witnesses are necessary before they are required to testify.

Finally, addressing Motion to Quash #3, and the second subpoena to Ms. Fernandes, Ms. Fernandes shall produce responsive documents as set forth in this order no later than 1 business day before she testifies. As part of the scheduling and meeting and conferring process, the parties will provide Ms. Fernandes adequate time to produce the documents. Ms. Fernandes is not required to produce any documents that are not in her immediate possession, or that Clovis cannot produce on its own.

Second—the documents are limited to dates from and after August 22, 2022.

Finally—the motion to quash is granted as to Category #5 for the reasons stated above addressing Motion to Quash #1.

ORDER

1. Clovis Unified's motion to quash Students subpoenas to the 45 witnesses is granted in part. The records shall be produced in accordance with the ruling on Motion to Quash #1 above.
2. Clovis Unified's motion to quash Student's subpoenas to Brittany Lee, Jaimie Fernandes, Johanna Morales, Barbara Bethel Dorr, and Alex Accardo is granted in part. The witnesses shall testify in compliance with the analysis of Motion to Quash #2. Both Ms. Fernandes and Ms. Lee's maternity leave will be addressed as set forth in this order.
3. Clovis Unified's motion to quash Student's second subpoena to Jaimie Fernandes is granted in part, consistent with the analysis in this order above.
4. The Administrative Law Judge hearing this matter has the discretion to modify or alter any of these orders at the time of hearing.

IT IS SO ORDERED.



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings