BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ADELANTO ELEMENTARY SCHOOL DISTRICT, DESERT MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA, AND DESERT MOUNTAIN CHILDREN'S CENTER.

OAH CASE NUMBER 2025060065

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM AND DENYING REQUEST FOR PROTECTIVE ORDER

OCTOBER 28, 2025

On June 2, 2025, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Adelanto Elementary School District. The Office of Administrative Hearings is referred to as OAH.

On August 5, 2025, OAH granted Student's motion to amend and deemed filed Student's first amended complaint. Student's first amended complaint added Desert

Mountain Special Education Local Plan Area, called SELPA, and Desert Mountain Children's Center as respondents.

On October 14, 2025, Student filed a motion to quash, asserting that the Respondents served Student with notices to consumer and four related subpoenas duces tecum to Cognitive Diagnostic Associates, corresponding to four of their assessors: Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas. Student asserts that the attached notice to consumer is defective because it indicates the incorrect day for production as reflected in the attached subpoenas duces tecum. The underlying subpoenas required production of the requested documents on November 4, 2025, the first day of the due process hearing. The notices to consumer specified a production date of August 19, 2025.

On October 16, 2025, OAH granted Student's request for continuance. OAH set the due process hearing to begin on December 9, 2025.

On October 17, 2025, Student filed a document entitled, "Parent's Request for Protective Order to Prevent Procedural Abuse and Unnecessary Burden." Through this motion, "[Parent], respectfully requests that this Tribunal issue a Protective Order to safeguard her rights, her privacy, and the integrity of the ongoing administrative process." Accordingly, Student's motion seeks to protect Parent's privacy and not Student's. Student also requests a protective order prohibiting the Respondents from issuing subpoenas on Cognitive Diagnostic Associates or the assessors in question without OAH's prior approval, and for OAH to admonish the Respondents "for their repetitive and abusive conduct."

Student cites legal authority related to quashing subpoenas, although portions of that cited authority are not applicable. For example, Student cites to portions of the

Government Code related to subpoenas. (Gov. Code, §11450.05-1145.30.) These portions of the Government Code explicitly do not apply to special education due process proceedings. (Cal. Code Regs., tit. 5, §3089.) Accordingly, OAH interprets Student's motion as another motion to quash the subpoenas discussed in Student's October 14, 2025, motion to quash.

On October 20, 2025, Student filed another document entitled, "Parent's Formal Motion for Sanctions and Permanent Invalidation of Unauthorized Subpoenas." Through this motion, Student seeks to quash the subpoenas duces tecum on Cognitive Diagnostic Associates and the assessors in question, and issue "a standing and permanent prohibition" barring the Respondents from issuing further subpoenas on Cognitive Diagnostic Associates or the assessors in question. Student also requests additional findings that the Respondents engaged in bad faith behavior.

As discussed in previous orders in this matter, Student had demonstrated a pattern of filing multiple overlapping motions on the same topic. Student's October 17, 2025, motion is subsumed, if not entirely duplicated by, Student's October 20, 2025, motion. Accordingly, the undersigned addressed both motions here.

On October 22, 2025, OAH ruled on Student's October 14, 2025, motion to quash. Through a written order, OAH denied Student's motion and modified the subpoenas deuces tecum and associated notices to consumer to reflect a production due date of December 9, 2025. OAH also denied Student's associated request for sanctions.

The Respondents filed a response in opposition to Student's motion on October 23, 2025. They argue that they did not engage in bad faith behavior, but rather attempted to correct an inadvertent error regarding the notice to consumer, once it was

discovered. The Respondents also argue that Student has not suffered any prejudice by their actions. Finally, Respondents argue that they would be deprived of due process if not allowed to subpoena Cognitive Diagnostic Associates and Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas.

On October 24, 2025, Student filed a reply to the Respondent's opposition. As explained in previous orders, motion practice before OAH in special education due process proceedings generally does not include reply briefing. However, the undersigned exercised his discretion to consider Student's reply.

APPLICABLE LAW

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

STUDENT HAS NOT ESTABLISHED THAT THE RESPONDENTS HAVE ENGAGED IN ABUSIVE CONDUCT

In his motion, Student realleges actions taken by the Respondents, which Student believe constitute, "a clear and deliberate pattern of procedural abuse." Student's complaints focus on the Respondents issuing subpoenas duces tecum to Cognitive Diagnostic Associates, corresponding to four of their assessors: Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas.

In certain circumstances, an administrative law judge, known as the ALJ, presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

OAH also has the authority to order that expenses be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the entity that is responsible for conducting due process hearings) as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or

tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

Student incorrectly asserts that OAH's August 27, 2025 order granting a previous motion to quash prevented the Respondents from reissuing subpoenas on these Cognitive Diagnostic Associates or the assessors in question. However, that order allowed Adelanto, the only respondent at that time, to reissue subpoenas in the future. Therefore, Student has failed to establish anything improper about the timing of the Respondents subpoenas.

Student's again realleges concerns with the associated notice to consumer attached to the subpoenas deuces tecum at issue. Those arguments were already considered and rejected in OAH's October 22, 2025 Order. The undersigned will not address them again here. Moreover, OAH has already modified the subpoenas and associated notices to consumer in its October 22, 2025 Order.

Student also argues that, "[t]he repeated and excessive issuance of subpoenas has caused significant emotional, logistical, and financial harm to the Parent." However, this argument is not persuasive. Student supports his argument with a series of unpersuasive conclusory statements that focus on a perceived imbalance in power between Student and the Respondents. Special education due process proceedings, by their nature, involve students, who may be represented by their parents, and local educational agencies, who are often represented by legal counsel. This scenario is typical of due process disputes, and Student has not proven anything impermissible or unduly prejudicial about that here.

Adversarial legal proceedings invariably come with some level of stress. Parties to special education due process proceedings are entitled to a fair process, not one devoid of the stresses typical of such adversarial proceedings.

Student has failed to establish that the Respondents have engaged in any bad faith conduct justifying sanctions. This is at least the third time Student has unpersuasively requested sanctions against the Respondents. As with those previous requests, Student's subjective characterization of Respondent's actions is not substantiated by the objective facts Student has established. Student's repeated, and often conclusory accusations, are not persuasive evidence or argument that Respondents have engaged in sanctionable conduct. Student provides no legal authority establishing that any of Respondents' conduct justifies sanctions. Accordingly, Student's request for sanctions is denied.

THE SUBPOENAS DO NOT VIOLATE STUDENT'S PRIVACY AND SEEK DOCUMENTS REASONABLY NECESSARY TO THE ADJUDICATION OF STUDENT'S COMPLAINT

Student argues that the subpoenas to Cognitive Diagnostic Associates and the four associated assessors seek information protected by the California Constitution, the Family Educational Rights and Privacy Act of 1974, called FERPA, and the Health Insurance Portability and Accountability Act of 1996, called HIPAA.

California law recognizes a constitutional right to privacy in an individual's medical history. (See, *Pettus v. Cole*, (1996) 49 Cal. App. 4th 402, 440 ["the 'zones of privacy' created by Article 1 , section 1 of the California Constitution extend to the details of one's medical history"]; *Palay v. Superior Court, (1993)* 18 Cal. App. 4th 919, 932, ["Fundamental to the privacy of medical information is the ability to control its circulation …"].) The constitutional right of privacy is not absolute, but is subject to invasion where a compelling public interest is involved. (*Freed v. Home Depot U.S.A, Inc.* (S.D. Cal 2019) 2019 W.L. 183833, p. 5; *Hill v. National Collegiate Athletic Association* (1994) 7 Cal. 4th 1, 37.) State law governs an individual's right to privacy in a civil matter. (Fed. Rule Evid. 501; *Freed v. Home Depot U.S.A.* (S.D. Cal. 2019) 2019 WL 183833.)

Student did not attach a copy of the subpoenas duces tecum he seeks to quash to either the October 17, or October 20, 2025, motions. However, Student previously provided OAH with copies of these subpoenas attached to Student's October 14, 2025, motion to quash, and the Respondents did not challenge the accuracy of those copies.

Those subpoenas sought 12 categories of records related to Cognitive Diagnostic Associates and the four associated assessors, related to independent educational

evaluations of Student between May 1, 2024, and November 4, 2025. The subpoenas included the required declaration establishing reasonable necessity for the records sought. The Respondents anticipate Student will call the independent assessors as witnesses and seek the requested information to prepare a defense to Student's due process complaint.

Student does not have an absolute right to block disclosure of any information related to their medical history. The right of privacy is not absolute. (*Hill, supra* at p. 38.) Student has placed his educational needs, and related medical needs, at issue through his due process complaint. Accordingly, he has waived confidentiality protections as to those needs. (See Evid. Code, §§ 996 and 1016.) However, a court must construe any claim of waiver, due to placing medical matters at issue, narrowly and the competing compelling interest is found only where it is established that the material sought is directly relevant to the litigation. (*Freed*, *supra,* at p. 5 [citing *Tylo v. Superior Court* (1993) 55 Cal. App 4th 1379, 1387].)

Here, the Respondents subpoenas are narrowly tailored, both in time and in scope, to the issues at hand, and do not impermissibly seek protected information. Therefore, Student's motion to quash the subpoenas on that ground is denied.

ORDER

1. Student's motion to quash Respondents' subpoenas duces tecum on Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas is denied.
2. Student's request for a protective order preventing Respondents from subpoenaing Cognitive Diagnostic Associates, Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas is denied.

3. Student's request for sanctions is denied.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi

Administrative Law Judge

Office of Administrative Hearings