BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025030636

ORDER GRANTING MOTIONS TO QUASH SUBPOENAS DUCES TECUM AND DENYING REQUESTS FOR SANCTIONS

JUNE 26, 2025

On March 17, 2025, Student filed a request for due process, called the complaint, with the Office of Administrative Hearings, naming Riverside Unified School District. The Office of Administrative Hearings is called OAH. On April 14, 2025, OAH continued the hearing to July 8 through 10, 2025, so the parties could participate in mediation on May 27, 2025.

THE SUBPOENAS DUCES TECUM

On June 11, 2025, District issued on each of the following a subpoena duces tecum: Douglas W. Stephey, Jenss Chang, and Abby Rozenberg.

By the subpoenas on Drs. Stephey and Chang, Riverside Unified seeks production on July 8, 2025, of two categories of documents regarding Student. For Stephey for the calendar years 2022 through 2024, Riverside Unified seeks the production of all correspondence between Riverside Unified and/or Student's parents and/or representative and/or advocate, and all assessment and assessments protocols, including interview notes. For Chang, Riverside Unified seeks the same two categories of documents for the 2021 through 2023 calendar years. Both subpoenas state that the requested documents are reasonably necessary because Student has filed a due process complaint against it alleging a denial of a free appropriate public education, or FAPE, raising issues regarding Student's educational presentation and how her disabilities affect her educationally, adaptively and functionally. Riverside Unified asserts that it requires the documents to address the issues regarding Student's unique circumstances.

By the subpoena on Rozenberg, Riverside Unified seeks production on July 8, 2025, of documents regarding Student from the 2021 through 2023 calendar years. Specifically, Riverside Unified requested documents used in contracting for and completing the assessment and recommendations for services for Student, including communications with Parents and their advocates and attorneys and District personnel regarding the evaluation, videos used in the assessment process or services provided to Student, educational records, intake documents, protocols, billings for services, and other writings between Rozenberg and Student's family or representatives or school district member. Riverside Unified asserts that the documents are reasonably necessary because Student has filed a due process complaint against it alleging a denial of FAPE,

raising issues regarding Student's unique circumstances. Riverside Unified asserts that it requires the documents to address the issues regarding Student's unique circumstances.

THE MOTIONS TO QUASH THE SUBPOENAS DUCES TECUM

On June 25, 2025, Student filed motions to quash the subpoenas directed to Stephey, Chang, and Rosenberg, and requested an award of sanctions against District's attorney. Student asserts there is no discovery in California administrative hearings and that parties are not permitted to broadly subpoena documents, that the records are confidential, and that District has failed to establish reasonable necessity for production of these confidential records. Student claims the subpoenas are overbroad and that the documents sought are not relevant. Student argues that the subpoenas are an improper fishing expedition which District improperly claims is necessary merely because Student filed a due process complaint alleging a denial of FAPE. Student argues the subpoenas lack any explanation as to why the requested documents, or any of them, are probative of the issues. Student asserts that District already has the correspondence with District. Although unclear, Student seems to argue her attorney has an earlier filed case set for hearing at the same time as this case, and it would be improper to have the documents produced prior to hearing with a motion to quash pending. Student asserts that District's issuance of the "fishing expedition" subpoenas was frivolous, entitling her to attorney's fees incurred in filing the motions to quash. Student asserts District's counsel should have known that "the SDT" was not an appropriate procedure in a due process case. Student seeks $2,765.00 in attorney fees for the Stephey motion to quash, $1,575.00 in fees for the Chang motion to quash, and $1,575.00 in fees for the Rozenberg motion to quash, for a total of $5,915.00 in sanctions.

Regarding the Stephey subpoena, Student also argues there is no issue raised in this matter regarding Stephey's assessment or his report which was paid for by Parents and protected by HIPAA absent a clear order. Student asserts Stephey has already agreed to release his report to Riverside Unified, but nothing else, and that his vision therapy/processing assessment is irrelevant. Student asserts District has raised no issues regarding the appropriateness of Stephey's evaluation, and any attempt by District to use the protocols or assessment notes is untimely.

Regarding the Chang subpoena, Student also argues that Chang's assessment paid for by another local educational agency is over two years old, having been completed in March 2023, so the time to challenge it has expired. Student asserts District has raised no issues regarding the appropriateness of Chang's evaluation, and any attempt by District to use the protocols or assessment notes is untimely.

Regarding the Rozenberg subpoena, Student also argues Rozenberg's 2022 assessment was paid for by another local educational agency, and there is no issue pending regarding that assessment. Student asserts that District has raised no issues regarding the appropriateness of Rozenberg's evaluation, and any attempt by District to use the protocols or assessment notes is untimely.

OPPOSITION TO THE MOTIONS TO QUASH

On June 25, 2025, District filed an opposition to each of Student's motions to quash. District argues that Stephey did an independent developmental evaluation of Student received by District in April 2024. It claims it needs all the documents Stephey could have relied upon from 2022 through 2024 to reach the conclusions in his report, for it to meaningfully evaluate Student's claim of a FAPE denial in this case. District asserts that its subpoena is not a fishing expedition, but an exercise of its rights. It

claims that the subpoena is limited to documents during the two-year period Stephey could have used in reaching his conclusions, and it needs the records to properly defend itself. It highlights portions of Student's complaint which alleges that Stephey conducted a visual therapy/visual processing assessment of Student which identified visual processing deficits that impacted her access to an education. It highlights that in issue six Student claims District failed to fund or file in response to Parent's request for an independent assessment by Stephey, so Parents proceeded with the assessment which identified Student has a visual processing deficit and required visual processing services. It also highlights in issue nine where Student alleges that District failed to offer goals in individualized education programs, or IEPs, in fall 2023 and early 2024 that had been identified by the independent educational evaluators, and without which goals the IEPs could not offer appropriate services. District does not specifically explain how the highlighted material supports its claims of reasonable necessity for the requested records.

Regarding Chang, District argues Chang did an independent psychoeducational evaluation of Student which it received in May 2023. District claims it needs all the documents Chang could have relied on from 2021 through 2023 to reach his conclusions, for it to meaningfully evaluate Student's claim of a FAPE denial. District claims it needs the documents to fully understand Chang's conclusions and otherwise defend against the assertions that the services offered were not appropriate. District asserts its subpoena is not a fishing expedition, but an exercise of its rights. It claims the subpoena is limited to documents in the two-year period Chang could relied upon. District highlights portions of Student's complaint alleging that Chang performed an independent assessment of Student completed in March 2023 and reviewed at an IEP team meeting in May 2023. It also highlights a portion of issue six that alleges District knew based on Chang's assessment, there were indications Student had significant

processing deficits and the same part of issue nine relied upon for the Stephey subpoena. District not specifically explain how the highlighted material supports its claims of reasonable necessity for the records requested.

Regarding the Rozenberg subpoena, Rozenberg did an independent speech and language evaluation of Student in November 2022. District claims it needs all the documents Rozenberg could have relied upon from 2021 through 2023 to reach the conclusions in her report, for it to meaningfully evaluate Student's claim of a FAPE denial. It claims it needs the documents to fully understand Rozenberg's conclusions and otherwise defend against the assertions that the services offered were not appropriate. District asserts its subpoena is not a fishing expedition, but an exercise of its rights. It claims the subpoena is limited to the documents in the two-year period Rozenberg could have used in making her conclusions. District also highlights the same part of issue nine of the complaint it relies upon for the Stephey and Chang subpoenas, but it did not specifically explain how the highlighted material supports its claims of reasonable necessity for the requested documents.

PREHEARING DISCOVERY AND REASONABLE NECESSITY FOR THE RECORDS

In general, there is no right to prehearing discovery in due process proceedings. Rather, the law accords prehearing access to two types of documents: parents have the right to request and receive the pupil's educational records within five business days at any time, and the parties are entitled to receive copies of all the documents the other party intends to use at hearing, not less than five business days prior to the hearing. (Ed. Code, §§ 56504 & 56505, subd. (e)(7).)

However, the Individuals with Disabilities Education Act, called 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); 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).) Thus, a subpoena duces tecum seeking production of documents on the day the hearing commences may be appropriate if the requisite showing of "reasonable necessity" is adequately made in a declaration supporting the subpoena and assuming no other legal bar to production exists.

Here, Student's assertion that Riverside Unified is engaged in discovery is without merit. Discovery occurs before the hearing begins. All the District's subpoenas require production of the requested documents on the first day of the currently scheduled hearing, on July 8, 2025. A subpoena for the production of documents from a witness on the first day of a due process hearing is not discovery.

However, the declarations attached to District's subpoenas fail to adequately demonstrate that all the requested the documents are "reasonably necessary" for District to present its case at hearing. Each of the declarations supporting the subpoenas contain almost the same identical one paragraph summary regarding reasonable necessity, but the paragraphs are vague and conclusory. They do not contain proper specificity explaining how each of the documents is reasonably necessary to the defense regarding one or more issues in this case. Although District's oppositions to the motions to quash contain some of the missing specifics as to how

and why certain documents are reasonably necessary to the defense, the justification for requesting each of the documents was required to be in the affidavits initially served with the subpoenas. District was required to explain in the affidavits how and why each of the documents sought is reasonably necessary to defend against one or more of Student's claims. District did not do that.

Based on the arguments in the opposition papers, the subpoenas appear overbroad. District claims it needs all the documents Stephey could have relied upon from 2022 through 2024 to reach the conclusions in his report District received in April 2024, but the scope of the subpoena District served is broader than that. It requests all correspondence from 2022 through 2024. District does not explain why it needs documents which postdate the report. District highlights portions of Student's complaint in its opposition but fails to comprehensively explain in the affidavit or in his opposition papers how the highlighted portions establish reasonably necessity for all requested documents. It is not an ALJ's responsibility to construct or develop a party's argument. (See, e.g., *Independent Towers of Washington v. Washington* (9th Cir. 2003) 350 F.3d 925, 929 [the court cannot construct arguments for a party, and will only examine issues specifically and distinctly argued in a party's brief]; *Loewen v. Berryhill* (9th Cir. 2017) 707 Fed. Appx. 907, 908 (nonpub. opn.), citing *Carmickle v. Commissioner* (9th Cir. 2008) 533 F.3d 1155, 1161, fn. 2 [the court is not required to address arguments made without specificity]; *In Re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare* (C.D. Cal., October 14, 2022, 8:19-cv-02075-JVS(DFMx)) 2022 WL 17080378, fn. 2 [the court will not perform the work of representing parties].)

Similarly, District claims it needs all the documents Chang could have relied upon from 2021 through 2023 to reach the conclusions in his report received by District in May 2023, but District's subpoena is broader than that. It requests all correspondence

from 2021 through 2023. District does not explain why it needs documents which postdate the report. District highlights portions of Student's complaint in its opposition but fails to comprehensively explain in the affidavit or in his opposition papers how the highlighted portions establish reasonably necessity for all requested documents. Again, it is not an ALJ's responsibility to construct or develop District's arguments.

As with the other subpoenas, District has not established reasonable necessity regarding the scope of the subpoena issued to Rozenberg. The independent speech and language evaluation was apparently completed by Rozenberg in November 2022, but District has failed to explain why it is reasonably necessary for Rozenberg to produce documents from 2021 through 2023, some of which clearly postdate the assessment. District highlights portions of Student's complaint in his opposition but fails to comprehensively explain in the affidavit or in his opposition papers how the highlighted portions establish reasonably necessity for all requested documents. District has also failed to explain why it requires Rozenberg's billings for services. It has not explained why it needs writings between Rozenberg and school district members which District presumably already has. Again, it is not an ALJ's responsibility to construct or develop District's arguments.

California law recognizes a constitutional right to privacy in certain types of consumer records. (See, e.g., *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"]; *White v. Davis* (1975) 13 Cal.3d 757, 774 ["Fundamental to our privacy is the ability to control circulation of personal information."].) However, the constitutional right of privacy is not absolute. (See, *In re Lifschutz* (1970) 2 Cal.3d 415, 438.) A party is recognized as waiving certain privacy rights regarding that party's medical or psychological condition to the extent the party

has put such condition at issue. (*Id.*, at p. 435; see also, Evid. Code §§ 996, 1016.)

Student may well have a right to privacy in the records and the information contained in the documents sought by the subpoenas. However, if Student decides to rely on these witnesses or their assessments at hearing, Student may have placed those records and the information contained therein, the protocols, interview notes, and communications with these witnesses at issue, making them subject to production at hearing based on a properly supported and tailored subpoena affidavit, regardless of HIPPA regulations.

Moreover, the fact that District might already have copies of some of the communications requested is not necessarily a proper objection, assuming District demonstrates based on a properly supported and tailored subpoena affidavit, why it is reasonably necessary for the witnesses at issue to produce communications District already has in its possession. Clearly, the breadth of documents the witnesses had or relied upon could be reasonably necessary to the defense when supported by a properly tailored subpoena affidavit. District's subpoenas are missing those specifics.

As drafted, District's subpoenas duces tecum and their corresponding affidavits issued to Stephey, Chang, and Rozenberg are inadequate. Student's motions to quash the subpoenas duces tecum are granted. Nothing in this order precludes Riverside Unified from issuing new subpoenas duces tecum and supporting affidavits for the same witnesses, drafted in conformity with this order.

SANCTIONS

Under certain circumstances, an administrative law judge 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."].) A party may be ordered to pay expenses of a party, or OAH because of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (Cal. Code Regs. tit. 5, § 3088, subd. (a); Gov. Code, §11455.30.)

Here, Student failed to demonstrate that District's attorney engaged in bad faith actions or tactics that were frivolous or solely intended to cause unnecessary delay, justifying an award of sanctions. District's issuance of the subpoenas to these witnesses was not frivolous or in bad faith. Two of the witnesses are specifically mentioned in Student's complaint and to the extent Student is relying on these witnesses or their assessments to support her claims, a properly supported and tailored subpoena affidavit could justify the production of the requested records. As drafted, Student's affidavits of reasonable necessity were simply insufficient.

ORDER

Student's motions to quash District's subpoenas duces tecum directed to Dr. Stephey, Dr. Chang and Rozenberg are granted without prejudice to District's issuance of new subpoenas duces tecum on these witnesses. Student's requests for sanctions are denied in their entirety.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings