

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

PALO ALTO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2026080048

OAH CASE NUMBER 2026070980

ORDER GRANTING MOTION TO QUASH SUBPOENAS
DUCES TECUM TO EVA NICOLOSI AND BRUCE BLOOM

AUGUST 27, 2026

On July 22, 2026, Palo Alto Unified School District filed a request for due process, called a complaint, naming Student. The Office of Administrative Hearings, called OAH, set the hearing to begin on August 18, 2026.

On June 30, 2026, Palo Alto served a notice to consumer on Student advising Student that Palo Alto intended on subpoenaing records from Eva Nicolosi and Bruce Bloom. Palo Alto sent copies of the subpoenas to Student with the notice to consumer. The subpoena to Nicolosi sought all documents related to an independent educational evaluation and documents Nicolosi relied on to form opinions about Student's

educational needs from January 1, 2024, on. Palo Alto also sought all records and communications between Nicolosi and Parents and Nicolosi and Student's attorney during the same time.

The subpoena to Bloom sought all documents related to an independent educational evaluation and documents Bloom relied on to form opinions about Student's educational needs from December 1, 2025, on. Palo Alto also sought all records and communications between Nicolosi and Parents and Nicolosi and Student's attorney during the same time.

Subsequent to Palo Alto filing a complaint and issuing subpoena duces tecum, Student filed a complaint on August 3, 2026, naming Palo Alto. Student also filed a motion to consolidate Palo Alto's case with Student's case. OAH granted Student's motion on August 7, 2026, and set the consolidated hearing to begin on September 22, 2026.

On August 4, 2026, Student filed a motion to quash the subpoena as to Bloom because it sought records that do not exist and are privileged or protected, that it was overbroad and unnecessary, that it improperly demands documents from OAH matters already adjudicated and attempts to relitigate issues previously decided. Student also contends the subpoena violates privacy safeguards, seeks proprietary materials, attempts to conduct improper prehearing discovery and impermissible collateral discovery for a federal case, and is oppressive, unreasonable, and cumulative.

On August 4, 2026, Student filed a motion to quash the subpoena as to Nicolosi because it sought records that are privileged and already in Palo Alto's possession, that it was overbroad and unnecessary, that it improperly demands documents from OAH matters already adjudicated and attempts to relitigate issues previously decided.

Student also contends the subpoena violates confidentiality and privacy safeguards, seeks proprietary materials, attempts to conduct improper prehearing discovery and impermissible collateral discovery for a federal case, and is oppressive, unreasonable, and cumulative.

On August 7, 2026, Palo Alto opposed the motion arguing it needed the documents to adequately prepare its case and fairly examine the basis, methodology, and reliability of Parent's disagreement with Palo Alto's multidisciplinary assessments and individualized education program, called an IEP. Palo Alto further contends it is entitled to understand the factual basis, data, observations, records, and communications underlying an evaluator's recommendations when those recommendations are being relied upon to challenge the appropriateness of an IEP.

A party to a due process hearing under the Individuals with Disabilities 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 IDEA. (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. (Cal. Code Regs., tit. 5, § 3089 [inapplicability of Gov. 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 five business days prior to the date of the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).)

Palo Alto's subpoena directs Eva Nicolosi and Bruce Bloom to produce the subpoenaed records to OAH on August 18, 2026, which was the first day of hearing. However, when OAH granted the motion to consolidate, it vacated the August 18, 2026, hearing date. Palo Alto has no statutory right to pre-hearing discovery. Palo Alto's subpoena should have been modified to be returnable on the first day of the consolidated hearing, on September 18, 2026. 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. The issued subpoenas did not seek prehearing discovery. They were issued to give adequate notice for the production of documents and complied with the required notice to consumer. However, because Student proved they were otherwise deficient there is no need to modify the production date.

Student argues that the subpoenas duces tecum should be quashed because it 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.)

Palo Alto's declaration of necessity was the same for both subpoenas. That Palo Alto filed a complaint to defend its March 19, 2026, psychoeducational evaluation and subsequent IEP. Palo Alto went on to say the records were critical for it to prepare its defense in the case. Palo Alto issued subpoenas to Student's private assessors to prove its psychoeducational evaluation and IEP were appropriate. Palo Alto is not defending against an allegation that Student has made. Palo Alto filed its complaint to defend its own assessments and IEP offer. Palo Alto failed to prove the necessity of the records.

The subpoena that Palo Alto issued failed to comply with the requirement that it be accompanied by a declaration establishing reasonable necessity for production of the records. Here, Palo Alto's statement of the basis for the need for the records does not match the issues it raised for hearing. Why Parents disagree with Palo Alto's multidisciplinary assessment or IEP is Student's defense to Palo Alto's case, not what Palo Alto must prove. While 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, as no good cause for production of the records has been established, the subpoena cannot be modified.

ORDER

1. Student's motion to quash Palo Alto's subpoena duces tecum to Eva Nicolosi is granted. The subpoena for records to Eva Nicolosi is hereby quashed.
2. Student's motion to quash Palo Alto's subpoena to Bruce Bloom is granted. The subpoena for records to Bruce Bloom is hereby quashed.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings