BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

RIVERSIDE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023090117

OAH CASE NUMBER 2024010703

ORDER GRANTING MOTION TO QUASH SUBPOENAS OF ABBY ROZENBERG, DARREN BARBER, AND DR. JENSS CHANG

FEBRUARY 29, 2024

On August 31, 2023, Student filed a request for due process naming Riverside Unified School District. On October 6, 2023, Student amended her complaint, and a new scheduling order was issued. On January 23, 2024, Riverside filed a request for due process hearing. An order consolidating the matters was issued on February 1, 2024. A prehearing conference was held on February 26, 2024.

On February 21, 2024, Riverside issued a subpoena duces tecum to Abby Rozenberg, Darren Barber, and Dr. Jenss Chang. A notice to consumer was sent to Student advising Student of the subpoena directed to Rosenberg, Barber, and Chang. Copies of the subpoena were sent to Student with the notice to consumer.

The subpoena to Rosenberg sought production of documents related to her assessment and recommendation of services to Student. The request further requested any communication with Parents, advocates, family attorneys, and District personnel related to Parent's request for an evaluation.

The subpoena to Barber sought production of the settlement agreement between Parents and Whittier City School District, any communication between Whittier, Parents, and the independent educational evaluator selected to conduct Student's IEE.

The subpoena to Dr. Chang sought production of all documents demonstrating the source of her selection to conduct an independent educational evaluation, called an IEE, including any correspondence related to the cost of the IEE and any correspondence related to the reason for the IEE.

On February 21, 2024, Student filed a motion to quash the three subpoenas. Student argued Rosenberg request was confusing and lacking an identified attachment. Upon review of Riverside's subpoena of Rosenberg included 19 pages, two pages were the notice to consumer, sixteen pages consisted of OAH's Subpoena to Produce Records or Other Things under Oath with or without Testimony. On page 19, an attachment describing both the records to be produced and a declaration of necessity was attached. Student is alleging she did not receive the final page of Riverside's Subpoena where all requested documents are described. Student argued the Barber and Chang requests

were overly broad, the declaration was unsigned, and specific records to be produced not identified.

Riverside did not file an opposition to Student's motions to quash.

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.

NO RIGHT TO PREHEARING DISCOVERY

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).)

Riverside's subpoena directs Rosenberg, Barber, and Chang to produce the subpoenaed records to the required documents on March 6, 2024. This is almost a month prior to the first day of hearing. Riverside has no statutory right to pre-hearing discovery. Riverside's subpoena should have been returnable on the first day of hearing. Reissuance of Riverside's subpoena will also allow Riverside to cure the issue of the missing document description page in the Rosenberg subpoena.

ORDER

Student's motion to quash Riverside's subpoena to Abby Rozenberg, Darren Barber, and Dr. Jenss Chang is GRANTED. The subpoena for records to Abby Rozenberg, Darren Barber, and Dr. Jenss Chang are hereby quashed.

Tiffany Gilmartin

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings