BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022050788

ORDER GRANTING IN PART AND DENYING IN PART PAJARO VALLEY UNIFIED SCHOOL DISTRICT'S MOTION TO QUASH SUBPOENA DUCES TECUM, AND MODIFYING SUBPOENA DUCES TECUM IN PART

AUGUST 25, 2022

On May 23, 2022, Student filed a request for due process naming Pajaro Valley Unified School District, called Pajaro Valley. On June 7, 2022, an order granting a continuance in this matter was granted scheduling the case for hearing on August 30 and 31, and September 1, 2022.

On August 10, 2022, Student issued a subpoena duces tecum to the custodian of records of Pajaro Valley. Student lodged a copy of the subpoena duces tecum with the

Office of Administrative Hearings, called OAH, on August 12, 2022. The subpoena to Pajaro Valley requested only the production of documents on August 30, 2022, in 14 categories. While enumerated as 15 categories of documents, numbers 3 and 4 are identical.

On August 17, 2022, Pajaro Valley filed a motion to quash the subpoena duces tecum on the grounds that Student failed to establish reasonable necessity for the requested documents, the documents Student requested are not relevant to the case, and the categories of documents Student requested are overbroad and vaguely described. On August 22, 2022, while the prehearing conference was being held, Student filed written opposition to the motion arguing the subpoena duces tecum was "narrowed to records with good cause to support Student's burden of preponderance of the evidence and address District's absent Response." Both parties gave oral argument on the motion during the prehearing conference.

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, 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.

REASONABLE NECESSITY FOR THE RECORDS

Pajaro Valley argues that the subpoena 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.)

Student's declaration in support of the subpoena states, conclusorily, "These records are of reasonable necessity for petitioner." Student stated the requested documents "are critical to Student's case in chief and specifically relate to the . . . issues in" Student's case, and are "necessary" to refresh witnesses' recollections, for "witness credibility," and "impeachment/rebuttal evidence."

During the August 22, 2022 prehearing conference, as stated in the August 22, 2022 Order Following Prehearing Conference, based on discussion with the parties and agreement from Student, there are 11 issues for hearing. Several categories of documents requested in the subpoena duces tecum to Pajaro Valley's custodian of records have no possible relevance to Student's case or Pajaro Valley's defenses, as they would not "hav[e] any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." Evid. Code, § 350.

CATEGORIES 1, 2, 3, AND 4

Specifically, categories 1 through 3, and the duplicative category 4, seek "policies, handbooks, and training materials to [*sic*] regarding finding children eligible for special education services under the category of specific learning disability applicable during the 2019/2020, 2020/2021, and/or 2021/2022 school years," and "regarding finding children suspect of dyslexia" and "finding children suspect of AD/HD applicable during the 2019/2020, 2020/2021, and/or 2021/2022 school years." Pajaro Valley's documents on these topics, however the topics might be construed or understood, will not relate to whether Pajaro Valley denied Student a free appropriate public education by doing or failing to do any of the things articulated in the 11 issues for hearing in this case. During the PHC Student argued the documents might show that Pajaro Valley or Alianza Charter School employees did not follow the written policies of Pajaro Valley, but there is no issue of whether employees followed any written policies and whether written

policies were followed or not is not determinative of whether Pajaro Valley complied with the Individuals with Disabilities Education Act or companion State law or regulation and therefore afforded or denied Student a free appropriate public education.

Student failed to demonstrate reasonably necessity of the documents requested in categories 1 through 4, specifically by failing to offer a factual showing of why the requested documents are material and relevant to the 11 issues to be litigated. Student's subpoena duces tecum to the Pajaro Valley custodian of records is quashed as to categories 1, 2, and 3, as well as duplicative category 4.

CATEGORY 5

Category 5 seeks "service logs, notes and communications regarding Student attendance, performance, and/or concerns in Alianza Charter School's reading intervention group." These documents are specific to Student and his participation in general education reading intervention services, which has direct bearing on whether and when Pajaro Valley reasonably should have suspected Student had a disability that might require special education and related services and refer him for assessment, or agree to Parents' requests for assessment. This document request specifically correlates to Issues 1 through 4 regarding when Pajaro Valley assessed Student for eligibility for special education and related services. These documents also could support or undermine Student's Issues 7 and 10, concerning whether the individualized educational programs dated May 27, 2021, and September 21, 2021, were reasonably calculated to confer on Student sufficient educational benefit based on the goals, placement, and related services offered in each individualized educational program.

It is possible the documents in category 5 were produced to Student in response to Parents' request for Student's educational record. But to the extent they were not

provided to Parents because they were not contained within Student's educational record, they are material and relevant to the Issues set for hearing, sufficiently described, and not overbroad. Pajaro Valley's motion to quash the subpoena duces tecum as to category 5 is denied.

CATEGORY 6

Student requests in category 6 "[a]ll contracts, memorandums of understanding, and other agreements between Pajaro Valley Unified School District and Alianza Charter School regarding Special Education and serving students under the Individual Disabilities Act [*sic*] ("IDEA") applicable during the 2019/2020, 2020/2021, and/or 2021/2022 school years."

During the PHC, Pajaro Valley would not agree it accepted all liability for any actions or inactions of Alianza Charter School regarding special education law compliance while Student attended Alianza Charter School, and did not agree it would not defend itself by denying liability and asserting only Alianza Charter School, who is not a party in the case, was responsible for providing Student any assessments and services under the Individuals with Disabilities Education Act and related State laws and regulations during the statutory timeframe. Therefore, documents regarding the legal relationship between Pajaro Valley and Alianza Charter School regarding special education law compliance during the time period at issue in the case are material and relevant to the issue of whether Pajaro Valley is liable for any denial of a free appropriate public education to Student while Student attended Alianza Charter School.

The documents described in category 6 of the subpoena duces tecum are material and relevant to the Issues set for hearing, sufficiently described, and not

overbroad. Pajaro Valley's motion to quash the subpoena duces tecum as to category 6 is denied.

CATEGORY 7

Student requests in category 7 "[a]ll [Student Study Team] meeting notes, agendas, and related communications in the custody, possession or control of Pajaro Valley Unified School District's [*sic*] regarding Student's education at Alianza Charter School during the 2019/2020 and 2020/2021school years."

The parties discussed this request during the PHC and Student agreed the description as stated is very broad and the documents Student was interested in were Student Study Team agendas, meeting notes, and written communications among members of the Student Study Teams regarding Student's progress in the services provided to Student as a result of the Student Study Team meetings. Pajaro Valley believes any documents responsive to this request as clarified by Student during the PHC were already produced to Student in response to Parents' request for Student's educational record. But to the extent they were not provided to Parents because they were not contained within Student's educational record, they are, as clarified by Student during the PHC, material and relevant to the Issues set for hearing.

Student did not establish the documents in category 7 as written in the subpoena duces tecum are reasonably necessary to his presentation of his case. However, as clarified during discussion in the PHC, a subset of the overbroad category 7 is material and relevant to the Issues set for hearing, sufficiently described, and not overbroad. Category 7 of the subpoena duces tecum is modified to require Pajaro Valley to produce any documents not previously provided to Parents in response to their request for Student's educational record that are agendas of Student Study Team meetings, Student

Study Team meeting notes, and written communications among members of the Student Study Teams regarding Student's progress in the services provided to Student as a result of the Student Study Team meetings.

CATEGORY 8

Student requests in category 8 "[a]ll MSST data of Student collected by District and Alianza Charter School staff and/or contractors while Student was a pupil at Alianza Charter." Discussion during the PHC revealed Student's request concerns "multi-tiered systems of support," which are general education interventions.

Pajaro Valley believes any documents responsive to this request were already produced to Student in response to Parents' request for Student's educational record. But to the extent they were not provided to Parents because they were not contained within Student's educational record, they are material and relevant to the Issues set for hearing.

The documents described in category 8 of the subpoena duces tecum are material and relevant to the Issues set for hearing, sufficiently described, and not overbroad. Pajaro Valley's motion to quash the subpoena duces tecum as to category 8 is denied and Pajaro Valley shall produce any documents in category 8 not previously provided to Parents in response to their request for Student's educational record.

CATEGORY 9

During the August 22, 2022 prehearing conference, Pajaro Valley withdrew its objections to the category of documents described as "[a]ll Pajaro Valley Unified School District's assessment protocols not produced in Student's records request to date reflecting assessments of Student for special education services."

CATEGORIES 10, 11, 12, AND 13

Student requests in categories 10, 11, 12, and 13 "notes, memos, emails, or other communications" by or to three named employees of Alianza Charter School and one Pajaro Valley school psychologist "regarding [each of the named people's] observations of Student in the classroom in the District's possession, custody or control for the 2018-2019, 2019-2020 and 2020-2021 school years."

In the subpoena duces tecum and Student's written opposition to Pajaro Valley's motion to quash, Student failed to demonstrate reasonably necessity of the documents requested in categories 10 through 13, specifically by failing to offer a factual showing of why the requested documents are material and relevant to the 11 issues to be litigated. Student's explanation of why they are relevant is because people at Alianza taught or observed Student years ago, so it might be necessary to refresh their memories or have documents to stand in where these people no longer recall information. Student speculates why the requested documents could possibly be necessary in case someone does not remember something, but this anticipation of a possible problem does not establish why any documents responsive to the subpoena would tend to prove or disprove any disputed fact that is of consequence to the determination of the action.

Student's written opposition also asserts the school psychologist's assessment "is imperative to findings that Student required specific services and supports, and to show that her conclusions and proposals were flawed and/or ignored Student's expansive needs." While that may be true, Category 13 of requested documents is not overtly about the assessment the school psychologist conducted after April 5, 2021, but goes back through the 2018-2019, 2019-2020, as well as the 2020-2021 school years.

Student's subpoena regarding categories 10, 11, 12, and 13 is overbroad and did not demonstrate reasonable necessity for the documents requested. Student's subpoena duces tecum to the Pajaro Valley custodian of records is quashed as to categories 10, 11, 12, and 13.

CATEGORY 14

Student requests in category 14 "[a]ny and all records and documents regarding developing and monitoring Student's performance and access to his education during Distance Learning/Covid-19-related school closures."

None of the 11 issues for hearing specifically concern the propriety of distance education for Student during a period of time during which he had not yet been assessed for eligibility for special education and related services. Student's claim that Pajaro Valley denied him a free appropriate public education by failing to assess him for eligibility for special education and related services before April 5, 2021, is not tied to distance learning or Student's performance during school closures due to the COVID-19 pandemic.

Student's complaint alleges on page 6, lines 5 to 6, that on February 12, 2020, based on challenges Student exhibited over the prior two and a half school years, Mother asked the school principal at a Student Study Team meeting when Student would be assessed for learning disabilities, and the principal allegedly responded, "Not yet." Student's Issues 1 and 2 regarding denial of free appropriate public education from May 23, 2020, through April 5, 2021, due to Pajaro Valley's failure from May 23, 2020, through April 5, 2021, to assess Student for eligibility for special education and related services, and failure from May 23, 2020, through May 21, 2021, to find Student eligible for special education and related services, are not specifically

connected to distance learning or COVID-19-related school closures. The requested category of documents is not reasonably related to the 11 Issues set for hearing.

Student failed to state a reasonable necessity for the documents in category 14. Documents regarding Student's performance and access to his education from March 2020 through the end of the 2019-2020 school year, and throughout the 2020-2021 school year logically would be included in Student's educational record, already provided to Parents. No special request through a subpoena will expand the documents in Student's educational record by characterizing them as relating to distance learning. Student's subpoena duces tecum to the Pajaro Valley custodian of records is quashed as to category 14.

CATEGORY 15

Student requests in category 15 "[a]ny and all evaluations, protocols, interview notes and forms, observation reports and staff notes, student history documents, progress report cards, parent-teacher conference notes, incident reports, service logs, and communications of any kind regarding Student during each school year Student was a pupil at Alianza Charter School that not [*sic*] produced in response to any of the above requests."

The parties discussed this request during the prehearing conference and, as stated in Student's written opposition, Student included this "catch-all" category out of doubt that Pajaro Valley provided Parents a complete copy of Student's educational record. Pajaro Valley agreed to again send Student's attorney every document in Student's cumulative file.

Category 15 is modified to include any document in Student's educational record Pajaro Valley had not already produced to Parents.

ORDER

1. Pajaro Valley Unified School District's motion to quash Student's subpoena duces tecum to the custodian of records of Pajaro Valley Unified School District is GRANTED and hereby quashed as to categories 1, 2, 3, 4, 10, 11, 12, 13, and 14.
2. Pajaro Valley Unified School District's motion to quash Student's subpoena duces tecum to the custodian of records of Pajaro Valley Unified School District is DENIED as to categories 5, 6, and 9.
3. Pajaro Valley Unified School District's motion to quash Student's subpoena duces tecum to the custodian of records of Pajaro Valley Unified School District is GRANTED IN PART and the subpoena is hereby MODIFIED as to categories 7, 8, and 15, as specifically stated in each section above.
4. Pajaro Valley Unified School District shall deliver the responsive documents by uploading them to Case Center by 9:30 a.m. on August 30, 2022.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings