BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050726

ORDER GRANTING IN PART MOTION TO QUASH SUBPOENA

OCTOBER 19, 2023

On September 7, 2023, OAH granted Student's request to file an amended complaint and issued a Scheduling Order, setting the case for hearing on October 24, 2023.

On September 25, 2023, Student issued a subpoena duces tecum on Ed Baisley, Director of Special Education at San Diego Unified. Student did not serve the subpoena until October 10, 2023, mere hours before the deadline for San Diego Unified to timely file an opposition to the subpoena in compliance with OAH rules for prehearing motions. San Diego Unified filed its Motion to Quash the Subpoena Duces Tecum on October 12, 2023. The ALJ waived the requirement to timely file the opposition, and San

Diego Unified's motion to quash was argued and addressed at the October 15, 2023, Prehearing Conference.

San Diego Unified motion seeks to quash Student's subpoena on the grounds that:

1. the subpoena was overbroad in scope;
2. the subpoena failed to establish reasonable necessity for the records;
3. the subpoena sought records protected by attorney-client privilege;

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.

SCOPE OF REQUEST AND REASONABLE NECESSITY FOR THE RECORDS

San Diego Unified argues that the subpoena duces tecum should be quashed because it is overbroad in scope and 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 the following records:

1. Email correspondence from May 16, 2021, through the date of hearing regarding Student and each of her parents.

Student contends these internal communications are critical to establish San Diego Unified's knowledge of the severity of Student's needs for special education services and accommodations, and to establish a lack of parental participation.

2. Any and all service logs that refer to or are related to Student;

Student contends service logs are critical to understand the frequency of Student's encounters with San Diego Unified staff, and the availability of district staff historically to prove Student's case and to support Student's requested remedies.

3. Any and all writings, documents, and electronically stored information regarding Student and each of her parents from May 16, 2021, through the date of hearing.

Student presented no specific contentions regarding the third request, however it is assumed the request is based upon the same contentions as the first and second requests.

San Diego Unified contends that the subpoena is overly broad as the subpoena requests documents for time periods not covered by Student's complaint. Student's allegations assert that San Diego Unified failed to provide Student a FAPE between February 3, 2023 and August 18, 2023. Student did not attend a district school for the 2022-2023 school year, and settled prior claims in a Settlement Agreement, dated February 3, 2023. Parents revoked consent to special education and related services on August 18, 2023, thereby terminating prospective special education obligations as of that date.

Student failed to establish the significance of any documents prior to the Settlement Agreement date of February 3, 3023, as relevant regarding the March 7, 2023 and June 11, 2023 individualized education programs which are the basis of Student's complaint. Therefore, Student's subpoena is overbroad and quashed in part to exclude documents prior to February 3, 2023, and after August 18, 2023.

San Diego Unified contends that Student's subpoena is overbroad by seeking "any and all" documents and communications regarding Student and each parent. The language of the document request does not exclude documents covered by attorney-client privilege. While Student's subpoena does not specifically request privileged communications, it is implied. Therefore, those documents, if any, which qualify as attorney-client communications, are excluded from production.

Student failed to establish any need for production of service logs. Student did not attend a district school for the 2022-2023 school year and revoked consent to further special education and related services on August 18, 2023. Student failed to establish or even allege in the complaint that San Diego Unified provided any services during this time. Therefore, San Diego Unified's request to quash Student's request for service logs is granted.

San Diego Unified also argued the subpoena was untimely, improperly served and failed to comply with OAH requirements. The procedural objections to Student's subpoena duces tecum are moot, as the ALJ granted Student's request to continue the hearing; therefore, Student must reissue the subpoena duces tecum to the new hearing.

date and shall comply with all procedural requirements regarding the service and content of subpoena duces tecum in a special education proceeding.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings