BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021010659

# ORDER GRANTING MOTION TO QUASH SUBPOENA

JUNE 3, 2021

On January 22, 2021, Student filed a request for due process naming San Dieguito Union High School District, called San Dieguito. On April 30, 2021, an order granting a continuance in this matter was granted scheduling the case for hearing on June 8, 9, and 10, 2021.

On May 18, 2021, San Dieguito served Parents via facsimile transmission with a Notice to Consumer and subpoenas duces tecum for the production of consumer's records on the following witnesses: custodian of records at Winston School, Dr. Holly Reed, Dr. Cynthia Norall, Heather Leuvano, Dr. Sarah Turner, and Dr. Shari Wexler.

On June 3, 2021, Student filed a motion to quash the subpoenas on several grounds, including the grounds that San Dieguito's subpoenas constitute an

impermissible attempt at discovery as the documents were requested to be produced on June 4, 2021, four days before the scheduled hearing in this matter.

## 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).)

San Dieguito's subpoenas direct each of six recipients to produce the subpoenaed records by June 4, 2021, which is four days prior to the first day of hearing. San Dieguito has no statutory right to pre-hearing discovery. San Dieguito's subpoenas should have been returnable on the first day of hearing. 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 motion to quash subpoenas duces tecum for the custodian of records for Winston School, Dr. Holly Reed, Dr. Cynthia Norall, Heather Leuvano, Dr. Sarah Turner, and Dr. Shari Wexler is granted based on the violation of impermissible discovery. Accordingly, the other bases upon which Student sought to quash the subpoenas are not analyzed herein.

The subpoenas duces tecum for these individuals are hereby quashed.

IT IS SO ORDERED.

*Rita Defilippis*

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings