BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

CUPERTINO UNION SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024100966

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING MOTION FOR CONTINUANCE AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING; ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM; ORDER DENYING STUDENT'S MOTION TO PLACE STUDENT IN A SPECIFIC CLASSROOM; ORDER DENYING STUDENT'S MOTION TO SEAL THE RECORDS

NOVEMBER 12, 2024

On November 8, 2024, Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings, held a prehearing conference by videoconference. The

Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Elizabeth Schwartz appeared on behalf of Cupertino Union School District. Parent appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

CONTINUANCE

On November 8, 2024, Student filed a motion to continue the due process hearing to allow Parents additional time to obtain legal representation and prepare for hearing. Student requested to continue the hearing to December 17, 18, and 19, 2024.

At the PHC, Cupertino Union did not oppose the continuance request, but was not available for hearing on December 17, 18, and 19, 2024, because of a conflict with another due process hearing for an earlier-filed case. The parties agreed to continue the hearing to January 14, 15, and 16, 2025.

A due process hearing must be conducted, and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

Student established good cause for a continuance to allow Parents additional time to obtain legal representation and prepare for hearing. Accordingly, the request for continuance is granted. All dates are vacated. This matter will proceed as follows:

PHC will be held on January 3, 2025, at 1:00 PM. PHC statements and motions are due to OAH no later than three business days before the PHC. Late motions will only be considered if good cause is established for the late filing.

Due Process Hearing will be held on January 14, 15, and 16, 2025. The hearing shall begin at 9:30 AM on all days unless otherwise ordered, and shall continue day to day at the discretion of the ALJ.

Parents may access resources for low-cost or free attorneys and advocates for special education at: https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/Page-Content/Special-Education-Services-List-Folder/Access-List-of-Low-Cost-or-Free-Attorneys-and-Advocates-for-Special-Education

General information on special education hearing processes can be found at: https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help

MOTION TO QUASH SUBPOENA DUCES TECUM

On November 8, 2024, Student filed with OAH a subpoena duces tecum, which was signed by Presiding ALJ Joy Redman prior to the PHC, to be served by Parent on Cupertino Union. The subpoena duces tecum referenced Parents' First Interrogatories and Requests for Production, filed separately with OAH.

The request for interrogatories and production of records sought, from 25 named individuals, written responses to specific questions, correspondences, a description of their experience with various educationally related proceedings, and records of informal oral mechanism examinations, and speech samples. Neither the subpoena duces tecum or the written request for interrogatories and production of records described why the

requested records were necessary for this proceeding. The subpoena duces tecum requested records to be produced on November 26, 2024.

At the PHC, Cupertino Union moved to quash the subpoena duces tecum because Student failed to serve Cupertino Union with the subpoena duces tecum signed by Presiding ALJ Redmon. Cupertino Union also moved to quash the subpoena because it constituted prehearing discovery and failed to establish the records sought were reasonably necessary in this matter.

At the PHC, Parent described problems involving Cupertino Union's actions and decision, beyond the issue to be heard and decided in this matter. The sole issue in this matter is whether Cupertino Union's June 2, 2024 Transitional Kindergarten Readiness Assessment Report meet legal requirements such that Student is not entitled to a publicly funded independent educational evaluations. Student argued the requested records were necessary to litigate all the problems Parent described.

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 California special education proceedings, the hearing officer shall have the right to issue subpoenas, which is an order to appear and give testimony, and subpoenas duces tecum, which is an order to produce records, 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.)

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 Individuals with Disabilities Education Act 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 but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

Education Code section 56505, subdivision (a), provides that the 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 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. Prehearing 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).)

Here, Student failed to serve Cupertino Union with a properly issued subpoena duces tecum supported by declaration establishing reasonable necessity for production of the records that are not required to be maintained in Student's educational records. In addition, the hearing in his matter was continued to begin on January 14, 2025. As a result, any request for records that are not maintained in Student's educational records to be produced prior to January 14, 2025, amounts to impermissible prehearing discovery. For these reasons, Cupertino Union's motion to quash Student's subpoena duces tecum is granted.

This Order does not preclude Student from renewing his records request through a subpoena duces tecum, properly issued and served on Cupertino Union. If Student seeks records through a subpoena duces tecum, Parent may access the forms and instructions at: https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

STUDENT'S MOTION TO PLACE STUDENT IN A SPECIFIC CLASSROOM

At the PHC, Student requested an order that Cupertino Union place Student in a specific transitional kindergarten classroom. Student contended an order is necessary to protect him from harm. Cupertino Union opposed the motion and argued OAH lacked authority to place Student in a specific classroom on an emergency basis.

OAH's jurisdiction is limited to claims involving the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility]; (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH's authority does not extend to orders for placing a child in a specific classroom on an emergency basis pending the resolution of this due process matter. Accordingly, Student's motion to place him a specific transitional kindergarten classroom is denied.

STUDENT'S MOTION TO SEAL OAH RECORDS

On November 8, 2024, Student filed a Request for Protective Order Sealing Confidential Records. The request was filed using an OAH General Jurisdiction form. The request seeks a protective order sealing exhibits, transcripts, recordings, and all documents in this matter. At the PHC, Cupertino Union argued Student failed to serve it

with a copy of the request. Student emailed Cupertino Union's attorney the request during the PHC.

At the PHC, Student contends sealing the records in this matter is necessary to protect Student's confidential information from unauthorized access. Student argued the records in this matter stored in OAH's electronic database is vulnerable to a security breach, and a data breach of his records would expose his confidential records to unauthorized persons. Student claims an order sealing his records may increase the level of security of the records in this matter. Cupertino Union argued a protective order is not necessary in this matter because special education due process matters are confidential.

Educational records maintained by OAH in special education matters are confidential and protected under the Family Educational Rights and Privacy Act. (20 U.S.C. § 1232(g).) Therefore, a protective order sealing the records in this matter is not necessary to protect Student's privacy interests. In addition, an order sealing the records in this matter does not enhance the level of cyber security of the records. Accordingly, Student's request to seal the records in this matter is denied.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

ORDER

1. Student's request for continuance is granted. All dates are vacated. The PHC will be held on January 3, 2025, at 1:00 PM. PHC statements and motions are due to OAH no later than three business days before the PHC. Late motions will only be considered if good cause is established for the late filing.
2. Due Process Hearing will be held on January 14, 15, and 16, 2025. The hearing shall begin at 9:30 AM on all days unless otherwise ordered, and shall continue day to day at the discretion of the ALJ.
3. Cupertino Union's motion to quash subpoena duces tecum is granted.
4. Student's motion for an order placing Student in a specific transitional kindergarten classroom is denied.

5. Student's motion for a protective order sealing the records in this matter is denied.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings