BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019090129

ORDER DENYING MOTION TO QUASH SUBPOENA ISSUED TO CUSTODIAN OF RECORDS FOR SKY PEDIATRIC THERAPY

JULY 13, 2020

On January 6, 2020, Student filed an amended request for due process hearing, naming Chaffey Joint Union High School District. On February 21, 2020, a prehearing conference order issued, granting a continuance in this matter, scheduling the hearing to begin on June 16, 2020.

On May 14, 2020, Chaffey issued eight subpoenas duces tecum to eight potential witnesses. One of these was directed to the custodian of records for SKY Pediatric Therapy, called SKY. The subpoenas sought particular categories of documents in the witnesses' possession. They directed the witnesses to submit their documents to the

Office of Administrative Hearings, known as OAH. Notices to consumer were sent to Student advising Student of the subpoenas. Copies of the subpoenas were sent to Student with the notice to consumer. On June 8, 2020, Student filed motions to quash all eight subpoenas on the grounds that they were overbroad and sought documents that were not reasonably necessary for Chaffey's defense. On June 11, 2020, Chaffey opposed the motion. On June 19, 2020, OAH ordered Student to instruct six witnesses including SKY to comply with the subpoenas issued to them, pending a ruling on the motions to quash.

As explained below, the motion to quash the subpoena issued to SKY is now denied. Because SKY has already complied with the terms of the subpoena, having submitted their documents to OAH on July 6, 2020, no further enforcement is ordered pertaining to this subpoena. OAH will provide the parties with electronic access to the documents SKY produced. Chaffey's July 6, 2020 motion for contempt sanctions pertaining to Student's instructions to SKY, in alleged noncompliance with OAH's June 19, 2020 order, is not addressed herein, but will be addressed by a separate Order. Finally, this Order is without prejudice to Chaffey's right to challenge the completeness of SKY's July 6, 2020 production of documents, once Chaffey has had the opportunity to review it.

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) 107 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

The documents subpoenaed from SKY are material and relevant. Specifically, Student's Issue 11, and testimony Student elicited from witness Richard Furbush on July 9, 2020, puts the documents directly at issue. Issue 11 asks OAH to decide whether Chaffey denied Student a free appropriate public education in the area of occupational therapy by "failing to address Student's sensory needs by providing services in a specialized therapy room or consultation services with a qualified individual" and by "[r]educing Student's clinical occupational therapy services." Chaffey subpoenaed ten categories of documents from SKY, a provider of clinical occupational therapy services, stating a specified time period, all concerning assessments of Student, services provided to Student, communications with specified individuals concerning Student, their instructions and their compensation. As established by the testimony Student elicited from Richard Furbush, an independent contractor to SKY, who provided clinical occupational therapy services to Student, the subpoenaed documents are material and relevant. They are reasonably necessary for Chaffey to explore the services Mr. Furbush provided, which Issue 11 puts directly at issue. The subpoenas are not overly broad. They are limited to documents concerning Student within a pertinent time frame. The subpoenas are tailored to documents and communications that are reasonably necessary to explore the services that are at issue.

The subpoenas were procedurally proper. They were issued timely. They contain the requisite notice to consumer. They were accompanied by declarations establishing reasonable necessity for production. They do not seek prehearing discovery. They were issued to give adequate notice to allow for the production of documents to OAH, such that electronic access to the documents could be provided on the first day of hearing.

ORDER

1. Student's motion to quash Chaffey's subpoena to the custodian of records for SKY Pediatric Therapy is DENIED.

2. Chaffey's July 6, 2020 motion for contempt sanctions pertaining to Student's instructions to SKY, in alleged noncompliance with OAH's June 19, 2020 order, will be addressed by a separate Order.

3. This Order is without prejudice to Chaffey's right to challenge the completeness of SKY's July 6, 2020 production of documents, once Chaffey has had the opportunity to review it.

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June Lehrman
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June Lehrman

Administrative Law Judge

Office of Administrative Hearings