BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024050221

ORDER QUASHING STUDENT'S SUBPOENAS

JULY 12, 2024

On May 2, 2024, Student filed a request for due process naming Roseville Joint Union High School District, called Roseville. Also on May 2, 2024, the Office of Administrative Hearings, called OAH, issued a scheduling order. That scheduling order included a reminder to parties to subpoena witnesses for the due process hearing, as well as a link to information and subpoena forms on the OAH website.

On May 31, 2024, OAH granted Roseville's request for continuance in this matter. That order set the hearing dates for July 9, 10, and 11, 2024. That order also included the following order regarding the parties' need to subpoena witnesses:

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

OAH convened a prehearing conference, called a PHC, on June 28, 2024. In the order following that PHC, the Administrative Law Judge, called an ALJ, who convened the PHC confirmed the July 9, 10, and 11, 2024 as the dates for hearing. The hearing would proceed day to day and could include additional days at the discretion of the ALJ conducting the hearing. That order included the following instruction regarding the parties' need to subpoena witnesses:

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

The order following the June 28, 2024, PHC also instructed the parties to develop a joint witness schedule, and instructed Student to have witnesses available at all times in the event there was not an agreement on a joint schedule.

On July 4, 2024, at approximately 5:10 PM, Student's counsel emailed Roseville's counsel 13 subpoenas for various teachers and staff to appear and testify at the hearing beginning on July 9, 2024. Student's subpoenas named the following individuals: Avery Beebe, Joanne Cook, Jessica McCartney, Corey Fukuman, Cindy Simon, Darcee Durham,

Annamaria Clark, Katie Carr, Thomas Chadwick, Michael Austin, Michael Zandonella, Jeff Dietrich, and John Fuller. These subpoenas are referred to as the July 4th subpoenas.

Roseville's counsel had not agreed to accept service of subpoenas on behalf of the teachers and staff. Roseville's counsel did not forward the July 4th subpoenas anyone. Roseville's offices were closed for the July 4th Holiday and did not re-open until the following Monday, July 8, 2024.

Roseville's counsel reminded Student's counsel that they had not agreed to accept service of subpoenas for teachers and staff, in part because those teachers and staff were on summer break and not currently under contract with Roseville. Roseville's counsel offered to provide Student's counsel with those individuals' home phone numbers and addresses. Roseville's counsel emailed Student's counsel this information at approximately 3:32 PM on July 8, 2024.

Student's counsel transmitted subpoenas to several teachers and staff members via their Roseville staff email addresses on July 8, 2024. Counsel sent these emails at approximately 7:28 PM. The subpoenaed individuals included Avery Beebe, Joanne Cook, Jessica McCartney, Corey Fukuman, Cindy Simon, Darcee Durham, Annamaria Clark, Katie Carr, and Thomas Chadwick. These subpoenas are referred to as the July 8th subpoenas.

Student's counsel did not serve Roseville's counsel with a copy of the July 8th subpoenas. Student's counsel has not provided OAH with copies of either the July 4th subpoenas or the July 8th subpoenas.

On the morning of July 9, 2024, at the start of the due process hearing, the undersigned ALJ assigned to conduct the hearing asked the parties for an update on the joint schedule, because one had not been provided to OAH as ordered. Rather, each

party had submitted its own proposed witness schedule. During that discussion, the parties explained the series of events regarding the July 4th subpoenas and the July 8th subpoenas described above.

Following that discussion, the undersigned moved to quash the July 4th subpoenas and the July 8th subpoenas on his own motion. The undersigned heard argument from the parties and quashed both sets of subpoenas. The undersigned issues the following Order following his ruling during the hearing.

APPLICABLE LAW

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 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. A court may make such orders on its own motion. (Code Civ. Proc. § 1987.1, subd. (a).)

SUBPOENA FOR ATTENDANCE OF WITNESSES

California Code of Regulations, title 5, part 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)." Thus, subpoenas are available to require the production of information that is reasonably necessary for a party to present their case at hearing. Like all other documents relevant to a due process matter, subpoenas must be served on all parties to the matter.

In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in California Civil Code. California Civil Code section 1985 governs the issuance of subpoenas. In accordance with the California Civil Code, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced. Parties must also comply with the consumer protections of California Civil Code 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services* (1993) 17 Cal. App. 4th 1072.) A subpoena for the attendance of a witness must also meet the good cause requirement by a factual showing of why the testimony and/or production of records 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.) A court may quash a subpoena for attendance of a witness. (*People v. Rhone* (1968) 267 Cal.App.2d 652, 657-658.)

STUDENT FAILED TO PROPERLY SERVE THE JULY 4TH SUBPOENAS

Student failed to properly serve the July 4th subpoenas, when Student's counsel emailed them to Roseville's counsel. Roseville's counsel had not agreed to accept service of the July 4th subpoenas, via email or otherwise. Therefore, Student could not substitute personal service of the July 4th subpoenas with service on Roseville's counsel.

Student argued that OAH's order following the June 28, 2024, PHC required Roseville's counsel to accept service of subpoenas and that it is a "common practice" for counsel for school districts to do so before OAH. Student's argument is not persuasive.

The relevant portion of the order follow the June 28, 2024, PHC indicated that Roseville may agree to accept service of subpoenas for witnesses under its control, or provide Student with the witnesses' most recent contact information. Nothing about that order required Roseville's counsel to accept service. Moreover, Roseville is currently on summer recess, and Roseville represented that the individuals included in the July 4th subpoenas are not currently under contract with Roseville. Thus, it is not clear that these individuals are currently under Roseville's control.

Student's argument regarding the "common practice" of school districts accepting service of subpoenas is equally unavailing. Even if such a practice was common, Student did not show a legal requirement for Roseville to adhere to it. Therefore, Student failed to properly serve the July 4th subpoenas. Because of this failure, the July 4th subpoenas are invalid and are quashed.

STUDENT FAILED TO PROPERLY SERVE THE JULY 8TH SUBPOENAS

Student also failed to properly serve the July 8th subpoenas. Student's counsel admitted that he served the July 8th subpoenas via email to those individuals' Roseville work email addresses. Student's service of the July 8th subpoenas rendered them invalid for multiple reasons.

As Student's counsel admitted, the individuals subject to the July 8th subpoenas had not agreed to service via email, as is required for service by email to be valid. OAH's form subpoena reminds parties of this fact. Even if Student's counsel had secured permission from the relevant individuals to serve them via email, Student failed to serve a copy of the July 8th subpoenas on Roseville's counsel. This failure also renders the subpoenas invalid. Therefore, Student failed to properly serve the July 8th subpoenas. Because of this failure, the July 8th subpoenas are invalid and are quashed.

This Order requires Student to immediately provide the individuals that were served with the July 8th subpoenas a copy of this Order and to inform those individuals that they are not required to comply with the July 8th subpoenas.

CONCERNS WITH THE TIMING OF STUDENT'S SUBPOENAS

While the undersigned does not need to reach the question of timing to determine the July 4th subpoenas and the July 8th subpoenas are invalid and must be quashed, it is still important to mention those concerns here. Parties must serve a person with a subpoena, "as to allow the witness a reasonable time for preparation and travel to the place of attendance." (Code of Civ. Proc. § 1987, subd (a).) While there is no specific measure for reasonability under subdivision a, Section 1987 of the Code of Civil Procedure provides specific timelines for serving other types of subpoenas. For example, if a party of record to testify, the subpoena must be served at least 10 days before the time required for attendance. (Code of Civ. Proc. § 1987, subd (b).) That time is extended to 20 days if the witness is required to bring documents, electronically stored information, or other things under their possession or control. (Code of Civ. Proc. § 1987, subd (c).)

Student's counsel emailed the July 8th subpoenas at approximately 7:30 PM, and the due process hearing was scheduled to begin at 9:30 AM on July 9, 2024. Even considering the shortened timelines for due process proceedings, it is not reasonable for a party to expect compliance with a subpoena within 14 hours of receipt. Student was aware of the possible need to subpoena witnesses since May 2, 2024, and has seemingly failed to act timely.

Moreover, Student's counsel informed the undersigned during the afternoon of July 10, 2024, the second day of hearing, that he intended to issue another set of

subpoenas to the same individuals improperly served on July 8, 2024. Student's counsel represented to the undersigned that he would be mailing them out soon. As such, Student had not yet attempted service. The undersigned cautioned Student's counsel regarding the apparent lateness of this third set of subpoenas.

Considering Student's history of improper service of subpoenas, the undersigned's concerns with the timing of further subpoenas, and the undersigned's duty to, "protect [a subpoenaed] person from unreasonable or oppressive demands" pursuant to Code of Civil Procedure, section 1987.1, subdivision (a), Student shall immediately file with OAH any subpoenas he may issue in this matter, including but not limited to those mentioned by Student's counsel during the hearing on July 10, 2024.

ORDER

1. Student's July 4th subpoenas are quashed in full.
2. Avery Beebe, Joanne Cook, Jessica McCartney, Corey Fukuman, Cindy Simon, Darcee Durham, Annamaria Clark, Katie Carr, Thomas Chadwick, Michael Austin, Michael Zandonella, Jeff Dietrich, and John Fuller are not required to comply with the July 4th subpoenas.
3. Student's July 8th subpoenas are quashed in full.
4. Avery Beebe, Joanne Cook, Jessica McCartney, Corey Fukuman, Cindy Simon, Darcee Durham, Annamaria Clark, Katie Carr, and Thomas Chadwick are not required to comply with the July 8th subpoenas.
5. Student shall immediately provide Avery Beebe, Joanne Cook, Jessica McCartney, Corey Fukuman, Cindy Simon, Darcee Durham, Annamaria Clark, Katie Carr, and Thomas Chadwick with a copy of this Order.
6. Student shall immediately file with OAH any subpoenas he may issue in this matter.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi

Administrative Law Judge

Office of Administrative Hearings