BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018021017 ORDER GRANTING MOTION TO ADMIT CHILD WELFARE SERVICE RECORDS

At hearing in this matter on April 22, 2018, Student was questioning a witness employed by San Dieguito Union High School District. Student asked the witness if an essay written by Student had been shared by the witness with any party outside District. The witness denied doing so. Student then attempted to introduce records of an investigation by Child Welfare Services to impeach the witness, asserting that the essay was part of the file and had been provided by the witness. District objected on the grounds that that the records were confidential and that the line of questioning imperiled the confidentiality of a mandatory child abuse reporter of concerns about a child's welfare. The objection was sustained, but the ALJ told the parties that Student could make a motion to admit the records.

Student moved to admit the records on March 26, 2018. District filed in opposition on March 29, 2018, and Student replied on the same day. Having considered the arguments made by the parties at hearing and the papers submitted, this order follows.

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 at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).) Evidence that may be presented at hearing includes educational records. Pupil or education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act. (20 U.S.C. § 1232; 34 C.F.R. § 99.3.) Pupil records include any item of information "directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means." (Ed. Code, §§ 49061, 56504.)

The Child Abuse and Neglect Reporting Act makes school employees mandated reporters of concerns about the abuse or neglect of a child. (Pen. Code, § 11165.7 (1)-(5).) Among other things, such mandated reporters must make a report to police or child welfare

agencies about a child whose needs for support, shelter, or care are being neglected by a guardian. (Pen. Code, § 11165.2.) A person covered under this Act who fails to make such a mandated report despite a reasonable suspicion of abuse or neglect is subject to criminal penalty. (Pen. Code, § 11166.2(c), 11166.01.) Mandatory reporting can also apply to a child suffering or at substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others. (Pen. Code, § 11166.05.) A child at such risk may be the subject of an action to declare the child a dependent of the court. (Welf. & Inst. Code, § 300(c).) The identities of mandated reporters are confidential, and may only be disclosed under limited circumstances. (Pen. Code, § 11167(d).)

The confidentiality of reports suspected of child abuse or neglect is governed by Penal Code section 11167.5, which provides:

> (a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine.

Pursuant to section 111675(b), those reports of suspected child abuse or neglect and information contained therein may be disclosed only to 14 classes of people, all of which are law enforcement or child welfare agency employees, hospital employees, or persons involved in the placement of foster or adoptive children. There is no provision for the release of these reports to the child or to the parents.

Beginning at Welfare and Institutions Code Section 825 are a series of provisions concerning juvenile court records about children who are the subject of dependency proceedings. A juvenile case file is defined as "a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." (Welf. & Inst. Code, § 827(e).) A juvenile case file may be inspected and copies obtained by a minor's parent or guardian. (Welf. & Inst. Code, §§ 827(a)(1)(D); 827(a)(5).) Nothing in a juvenile case file may be "made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court." (Welf. & Inst. Code, § 827 (a)(4).) At Welfare and Institutions Code section 827, subdivision (b)(2)(C), it is noted that "an intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars."

ANALYSIS

Student is sixteen years of age and represented by his parent in this matter, who holds Student's educational rights and who may waive his privacy rights. Parent initially wished to introduce the records of complaints made to the Child Welfare Service to show that a witness was untruthful when he denied sharing Student's essay with persons outside of District. Parent stated that Parent could testify that the mandatory reporter recounted conversations Parent had only with the witness, and that this would prove that the witness provided Student's essay to child welfare services. (The child welfare services reports given to Parent appear to have had identities redacted, but contextual clues remained.) Later on, Parent stated that the records would show that District personnel reported to child welfare services that Student had severe emotional or mental health issues requiring treatment, which Parent was neglecting to provide. Parent asserts that introduction of these reports would demonstrate that District had a basis of knowledge for suspecting that Student was a person with an emotional or mental health disability.

1. Welfare and Institutions Code section 827

Parent states that the records were acquired properly, including with this motion cover pages from The County of San Diego Health and Human Services Agency granting the request for the records. Although the County's letter does warn that Parent must get the approval of the presiding judge of the juvenile court before attaching anything from the "confidential juvenile case file" to any other document, Parent believes this does not apply because no dependency petition was filed in response to the investigation.

District argues that the records should be barred. At the least, it contends that Parent should be made to move under Welfare and Institutions Code section 827, subdivision (a)(4) for permission of the presiding judge of the juvenile court to make use of the records here. Further, District argues that the introduction of the records will intrude upon the confidentiality of the identity of a mandatory reporter. Even if the juvenile court grants permission, District argues that the records should not be admitted here.

To argue that Parent must get approval of the juvenile court presiding judge, District cites *In re Elijah S.* (2005) 125 Cal.App.4th 1532, a case ordering release under Welfare and Institutions Code section 827 of the juvenile records of deceased children who had not been subject to a dependency petition. District asserts that this makes Welfare and Institutions Code section 827 applicable whether or not a dependency petition was filed. That case, however, involved the question of what court had authority to release the records of deceased minors who had not been the subject of any jurisdictional petition.[1] It is a different question whether a parent may use records he or she has obtained unrelated to a dependency petition or other juvenile court matter without needing to seek leave from the juvenile court.

[1] Further, the agency opposing release did not contest that the minors were under the jurisdiction of the juvenile court even without a petition having been filed, and the decision noted that the agency therefore waived the issue. (*In re Elijah S.*, *supra*, at 1545.

Finding, as the *Elijah S.* court did, that the juvenile court has "exclusive authority" to determine whether to release juvenile court records to a third party does not answer the question posed here. (125 Cal App. 4th at 1542.) The issue is unclear.

Parent contends that, because no dependency petition was filed, that further use of Student's CWS records is governed by Welfare and Institutions Code section 10850. That section governs the release of information, primarily the identities of aid program recipients, by agencies receiving funding via grants-in-aid from the Federal government. Parent argues that this section places no restriction on the use of the information received from the County of San Diego, and that therefore Parent may do with it as Parent wishes.

The cover letter from County is a form document. It states that Parent is receiving the documents, described as part of the juvenile case file, under Welfare and Institutions Code section 827 "and/or" 827.10. It warns that Parent is receiving confidential material, protected under "WIC 10850 for Public Social Service records and WIC 827 for Juvenile Court documents." As noted in *Elijah S*, a juvenile case file "covers a wide range of records, including agency files where no juvenile court proceedings have been instituted and the matter is handled administratively." (*In re Elijah S., supra*, at 1552 (quoting 87 Ops. Cal.Atty.Gen. 72, pps. 75-76 (2004).) County's letter warns of further state and federal restrictions, and cites the applicable punishments under Welfare and Institutions Code section 827(a)(4) and Penal Code 11167.5.

County warned Parent that the juvenile court records may be covered by Welfare and Institutions Code section 827, but did so as part of a generic response to the request. Parent believes that the documents are not covered by Welfare and Institutions Code section 827, and may make any use of the material Parent wishes. Parent may or may not be subject to suit or sanction if Parent makes use of the juvenile court records without permission from its presiding judge, but District has not provided any authority supporting its assertion that they should be refused here.[2] District has cited OAH cases where the ALJs declined to enforce subpoenas against child welfare services offices without compliance with Welfare and Institutions Code section 827's procedures, but that does not relate to possibly unauthorized use of material provided pursuant to Welfare and Institutions Code section 827.

Parent may proceed at Parent's own hazard with the use of the juvenile case material obtained from the County of San Diego. Further, nothing prevents the County of San Diego from filing a motion with OAH that seeks to prevent Student's use of the records in question in this administrative hearing.

[2] District contends the records should not be admitted because they are hearsay. Hearsay is admissible in administrative proceedings, but may not be the sole basis for a factual finding. District may renew the objection at hearing if the materials are introduced.

2. Mandatory Reporters

The issue of the confidentiality of identities of mandated reporters is largely raised by District. In the moving papers, Parent briefly notes that Penal Code section 11167(d) does not apply because the identities of the mandated reporters are redacted and therefore not disclosed.

District argues at length that the importance of protecting children from abuse and neglect is sufficiently compelling to justify cloaking the identities or mandated reporters. However, the documents at issue here have already been released and are, according to Parent's report, redacted. No questioning will be allowed at hearing that infringes on the confidentiality of the identity of a mandated reporter. Parent's line of questioning whether a District employee had shared Student's essay with non-District personnel was designed to set a perjury trap affixed to the witness' possible status as a mandated reporter. That sort of questioning is improper and will not be allowed upon the resumption of the hearing. As it now appears, introduction of the child welfare services material from the juvenile case records does not imperil the confidentiality of mandated reporters.

Student correctly argues that the redacted reports may be relevant if they show that District personnel had a basis of knowledge that Student had a disability. However, District contends that under 20 USC section 1415(k)(5)(B), it would not matter if District personnel expressed concerns about Student's pattern of behavior to child welfare services because child welfare services was not in a supervisory position to District's employees. District is making a legal argument regarding a conclusion to be reached in the decision of this matter. Either party's contention may be correct. At this point, not having seen the proposed evidence, it cannot be said that it is sufficiently irrelevant to justify exclusion.

ORDER

1. Parent may introduce at hearing the juvenile case file records obtained from the County of San Diego. This order neither orders that they be submitted or immunizes Parent from any consequence of doing so. If Parent wishes such assurance, permission may be sought from the presiding judge of the juvenile court.

2. If Parent will be introducing those records at the continuation of the hearing in this matter on April 17, 2018, Parent must immediately provide District with a full copy of all such records if Parent has not already done so. Failure to do so may entitle District to a brief continuance of the hearing to allow it an opportunity to prepare its response.

3. Parent must take care to ensure that the identities of any mandated reporter has been redacted from the materials before introducing them at hearing. No questioning of any witness will be allowed that may imperil the confidentiality of any mandated reporter's identity.

4. Parent shall provide a copy of this order to the Presiding Judge of the Juvenile Court of San Diego County by April 12, 2018.

DATE: April 10, 2018

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings