BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020609

ORDER DENYING WITHOUT PREJUDICE MOTION TO QUASH TWO SUBPOENAS DUCES TECUM

SEPTEMBER 19, 2022

On February 16, 2022, Student filed a request for due process naming Long Beach Unified School District, called Long Beach District. On March 18, 2022, an order granting a request for continuance was issued, scheduling the case for hearing on May 17, 2022, through May 19, 2022. On June 30, 2022, an Order granting a second request for continuance was issued, scheduling the case for hearing on September 20, 2022, through September 22, 2022.

According to Long Beach District's Motion to Quash Subpoena Duces Tecum, filed with OAH on September 6, 2022, called the Motion to Quash, Student issued two identical subpoenas duces tecum, which included a notice to appear to testify at

hearing, to Dr. Jill Baker, Long Beach District's superintendent, on August 15, 2022, and August 29, 2022. Student did not file either of these subpoenas duces tecum with OAH. Moreover, Long Beach District did not attach copies of these subpoenas duces tecum to its Motion to Quash. Student also did not attach these subpoenas duces tecum to Student's opposition to the Motion to Quash.

On September 6, 2022, Long Beach District filed the Motion to Quash, on the grounds that the two subpoenas duces tecum should both be quashed because they were "improper and repetitive" and Student failed to demonstrate "reasonable necessity" for the demanded records. The Motion to Quash did not specifically identify the documents demanded in the subpoenas duces tecum, but instead stated the subpoenas sought "records for which a previous motion to compel was filed and denied and for which District's counsel has already provided a declaration." (*See*, Motion to Quash, p 1, ll. 24-25.) Student's opposition states the records demanded in the subpoenas duces tecum were progress reports. Student's opposition argued Student demonstrated reasonable necessity for the demanded records, without providing or quoting from the declarations which supported the subpoenas duces tecum.

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.)

In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, OAH requires parties to comply with procedures described in California Code of Civil Procedure. California Code of Civil Procedure section 1985 governs the issuance of subpoenas. In accordance with the California Code of Civil Procedure 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 Code of Civil Procedure 1985.3 when seeking the production of the personal records of a consumer. *(Sehlmeyer v. Dept. of General Services* (1993) 17 Ca. App. 4th 1072.) Thus, subpoenas are available to require the production of information that is reasonably necessary in order for a party to present their case at hearing.

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.

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).)

REASONABLE NECESSITY FOR THE RECORDS

A subpoena issued before trial must be served with a declaration of necessity pursuant to Code of Civil Procedure section 1985. This declaration must provide detail regarding the materiality of the documents demanded to the issues involved in the case, and state that the witness has the desired matters or things in her possession. The declaration must set forth in full detail the materiality of the demanded records to the issues involved in the case.

Long Beach District argues Student failed to demonstrate reasonable necessity for the documents demanded in the subpoenas. Student argues the demanded records are clearly reasonably necessary to prove Student's case.

THE SUBPOENAS DUCES TECUM AT ISSUE HAVE NOT BEEN PRESENTED TO OAH

Student did not file the two subject subpoenas duces tecum with OAH. The subpoenas were not attached to either the Motion to Quash, or Student's opposition to the Motion to Quash. Also, neither party uploaded the subpoenas duces tecum to the Case Center evidence software file for this case. Therefore, it is impossible for OAH to determine whether Student's declaration given in support of the subpoenas duces tecum stated facts which demonstrated reasonable necessity for the records sought. OAH cannot even be sure what records the subpoenas sought. Moreover, because OAH had no notice that the subject subpoenas duces tecum were issued, OAH did not email a request to upload the demanded documents to Dr. Baker.

Since the subpoenas duces tecum issued to Dr. Jill Baker on August 15, 2022, and August 29, 2022, have not been filed with OAH, and were not attached to either the Motion to Quash or Student's opposition to the motion, it is impossible for OAH to

determine if Student demonstrated reasonable necessity for the demanded documents. Therefore, the Motion to Quash is denied without prejudice.

ORDER

1. Long Beach Unified School District's motion to quash Student's subpoenas duces tecum dated August 15, 2022, and August 29, 2022, is denied without prejudice.

Christine Arden

Christine Arden
Administrative Law Judge
Office of Administrative Hearings