BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025050384

ORDER GRANTING MOTION TO QUASH SUBPOENAS DUCES TECUM

AUGUST 5, 2025

On May 9, 2025, Parent on behalf of Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Del Mar Union School District, called Del Mar. On June 26, 2025, Student filed a motion to amend and an amended complaint. On June 27, 2025, OAH issued an order granting Student's motion to amend. On June 30, 2025, OAH issued a scheduling order setting the prehearing conference for August 8, 2025, at 1:00 PM, and the due process hearing for August 19, through 21, 2025, starting at 9:30 AM each day.

On June 26, 2025, Student issued five subpoenas duces tecum to Del Mar's employees, specifically Director of Special Education Nadine Schick, Program Specialist

Kelly Brady, Speech-Language Pathologist Britney Massimino, School Psychologist Melissa Martin, and Education Specialist Mary Murphy. The subpoenas duces tecum requested that the documents be produced by July 26, 2025. On June 23, 2025, Del Mar filed a motion to quash the subpoenas duces tecum. OAH did not receive an opposition to the motion to quash from Student.

Student's subpoenas duces tecum seeks production of several categories of documents. These include documents related to formal and informal assessments of Student, assessment protocols, rating scales, surveys, feedback and all other documents pertaining to data collection, decision-making about Student's eligibility for special education, and placement decisions.

Del Mar argues an order quashing the subpoenas duces tecum is appropriate on several grounds. Del Mar argues the subpoenas request production of documents prior to the start of the due process hearing and therefore seek prehearing discovery. Del Mar further argues Student failed to establish reasonable necessity for the requested documents. Finally, Del Mar contends the subpoenas duces tecum were not properly served on Del Mar. Del Mar requests that each of the subpoenas duces tecum be quashed.

NO RIGHT TO PREHEARING DISCOVERY

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act, called IDEA. (20 U.S.C. § 1400 et seq.) Rather, the IDEA 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 "[t]he 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. 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 also are entitled to disclosures of any evidence the 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).)

Student's subpoenas duces tecum directed the witnesses to produce the subpoenaed records on July 26, 2025, which is 25 days prior to the first day of hearing. Student has no statutory right to pre-hearing discovery. Student's subpoenas duces tecum should have been returnable on the first day of hearing. Section 1987.1 of the Code of Civil Procedure provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it. Here, the subpoenas duces tecum seek prehearing discovery and are therefore quashed. This Order is without prejudice to Student issuing new subpoenas duces tecum in compliance with this Order. In the event

Student issues new subpoenas duce tecum, the production date should be August 19, 2025, which is the hearing start date.

REASONABLE NECESSITY FOR THE RECORDS

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).) The requesting party must set forth sufficient detail, specific to the legal and factual issues to be adjudicated, that the requested records are reasonably necessary for the party to present or defend a case. The reasonable necessity standard is a distinct, more stringent standard than the "good cause" standard governing discovery requests in civil litigation. Code of Civil Procedure section 1985, subdivision (b), 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.) A subpoena duces tecum seeking production of documents on the day the hearing commences may be appropriate if the requisite showing of "reasonable necessity" is adequately made in a

declaration supporting the subpoena and assuming no other legal bar to production exists.

Student's subpoenas duces tecum failed to comply with the requirement that they be accompanied by declarations establishing reasonable necessity for production of the records. While section 1987.1 of the Code of Civil Procedure provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it, because Student did not establish good cause for production of the records, the subpoenas cannot be modified. For this additional reason, Del Mar's motion to quash the subpoenas duces tecum is granted.

FAILURE TO PROPERLY SERVE SUBPOENAS DUCES TECUM

A subpoena for testimony or records in an administrative hearing must be served by:

- personal service;
- certified mail; or
- messenger service.

(Gov. Code, § 11450.20, subd. (b).) Service of a subpoena by electronic mail is only allowed when the person being served with the subpoena has provided written permission. (*OAH Self-Help Information for Special Education Cases – Subpoenas*; https://www.dgs.ca.gov/OAH/Case-Types/Special Education/Self-Help/subpoenas, OAH Subpoena Form, at p. 7.) The subpoenas duces tecum did not include proofs of service. Further, Del Mar argues it did not provide written permission to accept service through electronic mail. For this additional reason, the subpoenas duces tecum are quashed.

Nothing in this Order precludes Student from properly serving new subpoenas duces tecum with supporting affidavits, drafted in conformity with this Order.

ORDER

Del Mar's motion to quash Student's subpoenas duces tecum is granted without prejudice to Student's issuance of new subpoenas duces tecum.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings