BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CAMBRIAN SCHOOL DISTRICT.

OAH CASE NUMBER 2023030512

ORDER DENYING STUDENT'S MOTION TO QUASH SUBPOENA TO JUNIPER PSYCHOLOGY GROUP WITHOUT PREJUDICE PENDING ALJ IN CAMERA REVIEW OF PRODUCED RECORDS

MAY 15, 2023

On March 16, 2023, Student filed a request for due process naming Cambrian School District. On March 29, 2023, an order granting a continuance in this matter was granted scheduling the case for hearing on May 23, 2023 through May 25, 2023.

On May 8, Cambrian issued a subpoena duces tecum on Juniper Psychology Group. A notice to consumer was sent to Student advising Student of the subpoena directed to Juniper Psychology Group. A Copy of the subpoena was sent to Student

with the notice to consumer. The subpoena to Juniper Psychology Group sought records related to Student's treatment with Juniper Psychology Group and the accompanying expert opinions of witness Frances Thompson, Ph.D. to be uploaded to Case Center for the first day of hearing on May 23, 2023.

On May 9, 2023, Student filed a motion to quash the subpoena on the grounds that the records sought were privileged, protected by medical privacy, overbroad, constituted discovery and not relevant. On May 11, Cambrian opposed the motion arguing the records sought were necessary for the cross-examination of Student's expert witness, Thompson.

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.)

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.

Here, the documents sought through Cambrian's subpoena to Juniper Psychology Group properly seeks documents necessary to Cambrian's cross-examination of expert witness Thompson. The subpoena sought production of records to Case Center on the first day of hearing, May 23, 2023, and does not constitute pre-hearing discovery. Thus, there is no basis to quash the subpoena on either basis, and Juniper Psychology Group is required to produce records as requested by Cambrian to Case Center on May 23, 2023.

However, the analysis does not end there. At the prehearing conference, Student raised factual issues regarding potential commingling of Student's records and information with those of other individuals. Additionally, Student raised concerns about the potential scope and detail of therapist's notes and other documents related to

Student. These issues cannot be resolved without the ALJ's in camera review of the produced documents on the first day of hearing. As such, Student's motion to quash is denied without prejudice pending in camera review of the produced documents by the ALJ. The parties have also been ordered in the Order Following Prehearing Conference to meet and confer by 5:00 PM on May 18, 2023, with regard to the scope and breadth of the subpoena. Any agreements or stipulations between the parties shall also be used as part of the in camera review.

ORDER

1. Student's motion to quash Cambrian's subpoena to Juniper Psychology Group is DENIED without prejudice pending in camera review of the produced records by the ALJ. The records shall be produced by Juniper Psychology Group to the Administrative Law Judge on the first day of the hearing in this matter.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings