BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019090129

ORDER DENYING MOTION TO QUASH SUBPOENA ISSUED TO CUSTODIAN OF RECORDS FOR THE LAUNCHPAD THERAPY FOR KIDS

July 23, 2020

On January 6, 2020, Student filed an amended request for due process hearing, naming Chaffey Joint Union High School District. On February 21, 2020, a prehearing conference order issued, granting a continuance in this matter, scheduling the hearing to begin on June 16, 2020.

On May 14, 2020, Chaffey issued eight subpoenas duces tecum to the custodians of records for eight potential witnesses. One of these was directed to the custodian of records for the Launchpad Therapy for Kids, an occupational therapy clinic. The subpoenas

sought particular categories of documents in the witnesses' possession. They directed the witnesses to submit their documents to the Office of Administrative Hearings, known as OAH. Notices to consumer were sent to Student advising Student of the subpoenas. Copies of the subpoenas were sent to Student with the notice to consumer.

On June 8, 2020, Student filed motions to quash all eight subpoenas on the grounds that they were overbroad and sought documents that were not reasonably necessary for Chaffey's defense. On June 11, 2020, Chaffey opposed the motion. On June 19, 2020, OAH ordered Student to instruct six witnesses including Cherie Francis-Boegeman, Launchpad's principal and its custodian of records, to comply with the subpoenas, pending a ruling on the motions to quash.

On June 26, 2020, Student's counsel sent from her office, documents she had received from certain witnesses, including Ms. Francis-Boegeman, to OAH. On July 6, 2020 and July 8, 2020, Chaffey filed a motion for contempt sanctions, arguing that Student's June 26, 2020 submission was not in compliance with OAH's June 19, 2020 Order. On July 13, 2020, Student opposed. On July 13, 2020, OAH issued a ruling that the June 26, 2020 submission of documents by Student's counsel's office was not in compliance with the June 19, 2020 Order, and again directed Student's counsel to instruct witnesses to comply with the subpoenas as written, and send their documents directly to OAH. On July 14, 2020, OAH then received documents and a flash drive, directly from Launchpad.

As explained below, the motion to quash the subpoena issued to the custodian of records for Launchpad is now denied. Because Launchpad's custodian has already complied with the terms of the subpoena, having submitted documents to OAH on July 14, 2020, no further enforcement is ordered pertaining to this subpoena. OAH will provide the parties with electronic access to the documents that have been produced.

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) 107 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.

REASONABLE NECESSITY FOR THE RECORDS

The documents subpoenaed from the custodian of records for Launchpad are material and relevant. Specifically, the testimony Student elicited from witness Cherie Francis-Boegeman on July 22, 2020, puts the documents directly at issue. Ms. Francis-Boegeman performed an independent educational evaluation of Student. Chaffey subpoenaed ten categories of documents stating a specified time period, all concerning the evaluation of Student, communications with specified individuals concerning Student, their instructions and their compensation. As established by the testimony Student elicited from Ms. Francis-Boegeman, the subpoenaed documents are material and relevant. They are reasonably necessary for Chaffey to explore the assessment Ms. Francis Boegeman conducted. The subpoenas are not overly broad. They are limited to documents concerning Student within a pertinent time frame. The subpoenas are tailored to documents and communications that are reasonably necessary to explore the assessment by Ms. Francis- Boegeman that Student put at issue.

The subpoenas were procedurally proper. They were issued timely. They contain the requisite notice to consumer. They were accompanied by declarations establishing reasonable necessity for production. They do not seek prehearing discovery. They were issued to give adequate notice to allow for the production of documents to OAH, such that electronic access to the documents could be provided on the first day of hearing.

ORDER

1. Student's motion to quash Chaffey's subpoena to the custodian of records for Launchpad Therapy for Kids is DENIED.

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June Lehrman
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June Lehrman

Administrative Law Judge

Office of Administrative Hearings