BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MODESTO CITY SCHOOLS AND STANISLAUS COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2022040954

ORDER GRANTING MOTION TO QUASH SUBPOENA

JUNE 23, 2022

On April 28, 2022, Student filed a request for due process naming Modesto City Schools and Stanislaus County Department of Education. On June 23, 2022, an order granting a continuance in this matter was granted scheduling the case for hearing on July 19, 2022 through July 20, 2022.

On June 1, 2022, Student issued a subpoena duces tecum on Stanislaus County. Copies of the subpoena were sent to Stanislaus County with the notice to consumer. The subpoena to Stanislaus County sought any and all communications by Stanislaus County employees relating to Student regarding Student's individualized education plan development, Covid-19, placement, distance learning, extended school year, mental

health, educational placement and service logs. The documents are required to be produced on "the first day of hearing set by OAH" into the Caselines on-line evidence system.

On June 6, 2022, Stanislaus County filed a motion to quash the subpoenas on the grounds that the subpoena was untimely, communications as defined by Student were not student records under Education Code section 56504, the subpoena sought impermissible pre-hearing discovery, the subpoena was not accompanied by a sufficient statement of reasonable necessity and the subpoena was overbroad. On June 8, 2022, Student opposed the motion arguing that each of Stanislaus County's concerns were without merit.

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.

INSUFFICIENT NOTICE TO COMPLY

California Code of Civil Procedure section 1985.3, subdivision (d), stated that service of a subpoena dues tecum must be made "in sufficient time to allow the witness reasonable time to locate and produce the records or copies thereof." Code of Civil Procedure section 2020.410, subdivision (c) defines sufficient time as "no earlier than 20 days of the issuance, or 15 days after the service" of the subpoena, whichever is later.

Student's subpoena to Stanislaus County was issued on June 1, 2022. At that time, the hearing was set to begin on June 14, 2022, less than 20 days from the subpoena's issuance. However, at the June 6, 2022 prehearing conference Stanislaus Count's request for continuance was granted, moving the rescheduled first day of

hearing to July 19, 2022, and providing sufficient time for Stanislaus Count to produce the requested records. As such, under the two code sections above, Student has, provided Stanislaus County with sufficient time to respond to the subpoena. However, the analysis does not end there.

Student's subpoena duces tecum instructs Stanislaus County to produce copies of the following items to OAH on "the first day of hearing set by OAH." Under this formulation, Student failed to provide specific notice to Stanislaus County on what exact date the documents were to be produced. The subpoena must include specific information as to where and when the documents are to be produced. The date of production as "the first day of hearing set by OAH" does not provide the necessary date to Stanislaus County as Stanislaus County must look outside the subpoena for that information and the subpoena is not complete on its face. For that reason, the subpoena must be quashed.

ORDER

1. Stanislaus County's motion to quash Student's subpoena is granted as to the failure of the subpoena to specify the calendar date upon which records are to be produced to OAH through Caselines. This Order does not in any way

restrict Student's right to reissue the subpoena with the specific calendar date included. All other challenges to the subpoena are mooted at this time and subject to being reasserted in the event the subpoena is reissued.

IT IS SO ORDERED.

Ted Mann

Ted Mann

Administrative Law Judge

Office of Administrative Hearings