BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025041265

ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

MAY 23, 2025

On April 28, 2025, Student filed a request for due process naming Cupertino Union School District. On April 30, 2025, the Office of Administrative Hearings, called OAH, issued a scheduling order setting both expedited and non-expedited due process hearing dates. The expedited due process hearing is set to begin on May 28, 2025.

On May 14, 2025, Student, who is represented by his Parents and not legal counsel, sent a subpoena duces tecum to Cupertino requesting compliance by May 28, 2025. However, the subpoena Parent sent on May 14, 2025, was not signed by an attorney or administrative law judge. Parent sent the subpoena to OAH on the same

day. Presiding Administrative Law Judge Dalton signed the subpoena, and OAH returned it to Parent on May 15, 2025. This will be referred to as the Signed Subpoena.

The Signed Subpoena seeks answers to multiple interrogatories and request production of documents, including:

- Category A: Personal and professional information about at least 54 specified individuals that were involved in Student's education, services and June 2, 2024 assessment report, including personnel files;
- Category B: Copies of correspondence related to Student from at least 54 specified individuals that were involved in Student's education, services and the June 2, 2024, assessment;
- Category C: A detailed history of at least 54 specified individuals regarding their involvement in due process hearings, individualized education program disputes, or dispute resolutions, mediations, school district investigations, and /or California Department of Education disputes;
- Category D: Unspecified informal speech and language evaluation, called an informal oral mechanism examination, informal speech sample, and details about any and all observations, including who was present;
- Category E: All correspondence between Cupertino staff, contractor vendor or partner, and McAuliffe school staff regarding Student between November 1, 2024 and May 27, 2025;
- Category F: Statistics regarding the student population McAuliffe school site; and
- Category G: Full names and addresses of all substitute teachers and student interns who serviced or attended classroom "2TK" at McAuliffe

school the during the 2024-2025 school year, separated by days and names;

- Category H: Full names and addresses of all substitute teachers and student interns who serviced or attended classroom at Collins Elementary during the 2024-2025 school year, separated by days and names;
- Category I: All digital material pertinent to Student stored on the iPad used in classroom 2 at McAuliffe Elementary, between November 5, 2024, and May 27, 2025.

The Signed Subpoena did not include a declaration establishing reasonable necessity for the requested documents and information.

Student served the Signed Subpoena on counsel for Cupertino on May 19, 2025, the morning before the expedited prehearing conference. Student did not file the signed subpoena and proof of service with OAH as required.

On May 20, 2025, Cupertino filed a motion to quash the Signed Subpoena on the grounds that the subpoena is untimely and seeks civil discovery not permitted in special education due process proceedings. Cupertino also argues the subpoena is overly broad, vague, and unduly burdensome. It also asserts Student failed to demonstrate a reasonable necessity for the records requested.

On May 22, 2025, Student filed a document entitled "Student's Witness List & Initial Evidence List." Embedded in that document, Student responded to Cupertino's motion to quash, asserting that Cupertino's motion was untimely, and that Presiding Administrative Law Judge Dalton "signed into order" Student's subpoena on May 15, 2025.

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).)

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.

CUPERTINO'S MOTION IS TIMELY

Pursuant to OAH orders, unless a particular motion is subject to a different filing timeline, parties must file prehearing motions no later than three business days prior to the prehearing conference, unless the party can establish good cause for the late filing. Here, Cupertino established good cause for the late filing of its motion to quash.

Student did not properly serve the Signed Subpoena until May 19, 2025, the same day as the expedited prehearing conference. Cupertino filed the instant motion

the next day with a sworn declaration establishing good cause for the late filing. Under these circumstances, Cupertino established good cause for the late filing.

THE SIGNED SUBPOENA IS NOT AN ORDER FROM OAH

Student asserts that Presiding Administrative Law Judge Dalton "signed into order" the Signed Subpoena. Student's argument demonstrates a misunderstanding of the effect of Presiding Administrative Law Judge Dalton's signature. Subpoenas may be issued by a licensed attorney, or by a judge, or clerk of the court. (Code of. Civ. Proc., § 1985, subd. (c).) Courts must issue subpoenas upon request. (*Id.*; see also *McLeod v. Board of Pension Commissioners* (1970) 14 Cal.App.3d 23, 61.) However, a court's issuance of a subpoena does not insulate that subpoena from being quashed. (*McLeod, supra*, 14 Cal.App.3d at p. 61.) The same principles apply to OAH. (*Ibid.* [citing *Hannah v. Larche* (1960) 363 U.S. 420, 442, 80 S.Ct. 1502.)

Nothing about Presiding Administrative Law Judge Dalton's signature endorsed the contents of Student's subpoena or approved of its validity. Rather, the Signed Subpoena, like any other subpoena issued by a court or licensed attorney, is subject to a motion to quash after issuance. (*McLeod, supra*, 14 Cal.App.3d at p. 61; see also *Smith v. Superior Court of Sacramento County* (2020) 52 Cal.App.5th 57, 76-77.)

STUDENT DOES NOT HAVE A RIGHT TO PREHEARING DISCOVERY

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (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 (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

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. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

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 at any time copies of the educational records relating to the student in question that are maintained by the school district and the school district must produce the records within five business days. (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 five business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

By the Signed Subpoena, Student seeks to have Cupertino respond to answer interrogatories and produce various documents on the first day of hearing. Student's interrogatories are governed by the Civil Discovery Act. (Code of Civ. Proc., § 2016.010, et seq.) However, the Civil Discovery Act does not apply to special education due

process proceedings. The Expedited Prehearing Conference Order dated May 19, 2025, already requires Cupertino to identify the witnesses on Student's list that require a subpoena and provide the witness's most recent contact information for any witness it cannot produce to testify at the expedited hearing. Beyond what that Order requires, Cupertino is under no obligation to answer any of the interrogatories or create any documents. Student's request that District create any documents is an interrogatory disguised as a document request, and is therefore improper.

Student's interrogatories included in the Signed Subpoena are inconsistent with Student's rights under special education law which do not permit interrogatories. To the extent Student is seeking contact information for Student's witnesses so it can serve them with a subpoena to appear at the expedited hearing, that has already been addressed in the Prehearing Conference Order, so that part of the motion is moot. Otherwise, the Signed Subpoena is quashed as to Categories A (items 1 through 3, 5, through 8 and 12), C. F, G and H.

STUDENT DID NOT SHOW REASONABLE NECESSITY FOR THE RECORDS

Categories A (items 4, 9, 10 and 11), B, D, E and I of the Signed Subpoena seek the production of various documents. 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.

However, Student does not have to demonstrate reasonable necessity for the production of Student's educational records. Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act, called FERPA, to include "records, files, documents, and other materials" containing information directly

related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.) Pupil or education records do not include "records of instructional, supervisory, and administrative personnel…which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

Here, Student has failed to establish that all the requested records are "education records." Category A, item 4, seeks the production of various resumes. Again, the Expedited Prehearing Conference Order already requires Cupertino to produce the resumes of certain of its witnesses. As such, the motion is moot as to those individuals, if any. Category A, items 9, 10, and 11 seek documents pertaining to other people, not Student. Categories B and E seek correspondence. Unless these documents were placed in Student's permanent file, they are not educational records. See *S.A. ex rel. L.A. v. Tulare County Office of Education* (N.D. Cal. Sept. 24, 2009) 2009 WL 3126322, aff"d. *S.A. v. Tulare County Office of Education* (N.D. Cal. October 6, 2009) 2009 WL 3296653.) Likewise, as framed the documents sought in Category I are not documents kept in Student's permanent file.

There is no question that Education Code section 56504 requires a school district to provide parents with certain evaluation materials that pertain directly to their child. (*Newport-Mesa Unified School District v. State of California Department of Education* (C.D. Cal. 2005) 371 F.Supp.2d 1170.) However, Category D does not identify specify that Student is seeking assessments pertaining to Student and the request is otherwise vague.

Here, Student failed to establish reasonable necessity for the requested records. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) The declaration attached to the Signed Subpoena fails to adequately demonstrate that all the requested the documents are "reasonably necessary" for Student to present his case at the expedited hearing. The declaration supporting the Signed Subpoena does not contain any explanation as to why and how each category of documents is necessary for the presentation of Student's case regarding the expedited issue. Student made no statement of the basis for the need for the records. Because Cupertino has established that the Signed Subpoena should be quashed, the undersigned need not address the remainder of Cupertino's arguments.

ORDER

1. Cupertino's motion to quash Student's subpoena duces tecum is granted, except as otherwise ordered in the Expedited Prehearing Conference Order.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings