BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT AND CONTRA COSTA COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2019100433

ORDER DENYING STUDENT'S MOTION TO QUASH SUBPOENA AND GRANTING IN PART AND MODIFYING IN PART STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM

On October 10, 2019, Student filed a request for due process naming Pleasanton Unified School District and Contra Costa County Office of Education.

On November 26, 2019, Pleasanton Unified issued a subpoena and subpoena duces tecum on Parent and a subpoena duces tecum on Jennifer Evangelista. Pleasanton's subpoena ordered Parent on December 3, 2019. In the subpoena duces tecum, Pleasanton directed Parent and Ms. Evangelista to produce family court documents, specifically, documents designating the maternal grandmother as the subscriber of Student's medical insurance, the most recent child custody order, as well

as the most recent child and family support order to Pleasanton's counsel on December 2, 2019.

On November 27, 2019, Student filed a motion to quash the subpoenas duces tecum on the grounds that Pleasanton's subpoena was deficient, specifically there was insufficient notice to comply, and providing the documents prior to the first day of hearing would constitute pre-hearing discovery.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities 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, the 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), states 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." For a non-party to the proceedings, 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. Under these two code sections, Pleasanton has not provided Ms. Evangelista with sufficient time to produce the documents requested in the subpoena duces tecum.

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 or 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 (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. (5 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 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 are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing at least five business days prior to the date of the first day of hearing. (Ed. Code, 56505, subd. (e)(7).)

Pleasanton's subpoena duces tecum directs Parent and Ms. Evangelista to produce the subpoenaed records to Pleasanton's counsel on December 2, 2019, which is the day prior to the first day of hearing. Pleasanton has no statutory right to pre-

hearing discovery. 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. Therefore, the Parent's subpoena duces tecum is modified to change the date of production to December 3, 2019. Ms. Evangelista's subpoena duces tecum is quashed. As a party to the action, Parent is directed to produce those documents listed in Pleasanton's subpoena duces tecum which are within his possession when he appears on December 3, 2019.

ORDER

1. Student's motion to quash Pleasanton's subpoena duces tecum is granted in part and the subpoena duces tecum is hereby modified. Parent shall produce those documents within his possession that are called for in the subpoena duces tecum, specifically the family court order designating the maternal grandmother the subscriber of Student's medical insurance and related conditions or authorizations, the most recent child custody order, the most recent child support order, and the most recent family support order.
2. Student's motion to quash Pleasanton's subpoena duces tecum is granted as to its contention that insufficient time was provided to Ms. Evangelista for production of the documents.

IT IS SO ORDERED.

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Tiffany Gilmartin
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DATED: November 27, 2019

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings