BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026030239

ORDER GRANTING MOTION TO QUASH, IN PART AS STUDENT'S SUBPOENAS DUCES TECUM

APRIL 28, 2026

On February 25, 2026, Student filed a request for due process naming Berkeley Unified School District, called Berkeley. This case is set for hearing on May 5, 6, and 7, 2026.

On April 20, 2026, Student issued a subpoena duces tecum on Berkeley Unified School District. On April 21, 2026, Berkeley filed a motion to quash the subpoena on the grounds that the motion was untimely, failed to establish reasonable necessity for the requested documents, and was overbroad and burdensome.

The subpoena to Berkeley sought a broad array of documents over the course of three academic years including all documents relating to 1) the offer of a FAPE made by

Berkeley for the 2023-2024, 2024-2025, and the 2025-2026 school years; 2) Student's behavior services and behaviors exhibited within Berkeley from August 2023 through the present date; 3) Berkeley's provisions of special education services from August 2023 through the present date; 4) Dr. Kristin Gross' Independent Educational Evaluation of Student, and 5) Student's mental health from August 2023 through the present date. The subpoena provides a broad definition of documents, specifically documents, records, books, papers, contracts, memoranda, correspondence (including internal emails, text messages, and letters), notes, photographs, drawings, charts, graphs, other writings, recording tapes, recording discs, mechanical or electronic information storage, or recording elements (including any information stored on a computer). The request was submitted to the custodian of records for Berkeley. The documents were requested to be produced by May 5, 2026, the first day of the due process hearing.

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.

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 duces tecum instructs the custodian of records for Berkeley Unified School District to produce copies of the above following items to Student on May 5, 2026. The subpoena was issued and served on Berkeley on April 20, 2026.

Production of the records was requested by May 5, 2026, fifteen days after the issuance and service of the subpoena. Therefore, the subpoena is timely.

REASONABLE NECESSITY FOR THE RECORDS

Berkeley argues that the subpoena duces tecum should be quashed because it fails to make the requisite showing of reasonable necessity for the requested documents with a statement of facts showing the material and relevant information sought. (*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.)

Student's declaration in support of the subpoena states production of the requested records is reasonably necessary for Student to prosecute the case, in which she alleges the District failed to offer her a free, appropriate public education during the 2023-2024, 2024-2025 and 2025-2026 school years. Berkeley contends that the records requested are not reasonably necessary because the subpoena request is broader than Student has established a reasonable necessity for. Student's declaration establishes that the subpoenaed documents are material and relevant as they relate to her special education planning and services and mental health. At the prehearing conference, the parties and ALJ clarified that the statutory period is limited to February 25, 2024, through February 25, 2026. Student fails to establish that the subpoenaed documents are relevant for the scope requested as explained below.

SCOPE OF THE SUBPOENA

Berkeley contends that the subpoena is overly broad and burdensome. Student's definition for documents includes "communications" but fails to specify any individuals for which communications are requested. This order modifies the subpoena to narrow the scope as detailed below.

DOCUMENTS RELATED TO THE OFFER OF A FAPE MADE BY BERKELEY UNIFIED SCHOOL DISTRICT FOR THE 2023-2024, 2024-2025, AND 2025-2026 SCHOOL YEARS.

Berkeley contends that the request is vague and overbroad due to Student's definitions for "documents" and "relate/relating to." The request is overly broad to the extent that it requests communications but fails to identify specific individuals for which communications are requested. The subpoena is modified to include all Student's IEP meeting related reports, notes, and written notices from August 2023 through February 25, 2026. The subpoena is modified to exclude communications that fall outside of the areas identified above.

DOCUMENTS RELATED TO STUDENT'S BEHAVIOR SERVICES AND BEHAVIORS EXHIBITED WITHIN BERKELEY UNIFIED SCHOOL DISTRICT FROM AUGUST 2023 THROUGH THE PRESENT DATE.

Berkeley contends that the request is vague and overbroad due to Student's definition for "documents" and "relate/relating to." The request is overly broad to the extent that it requests communications but fails to identify specific individuals for which communications are requested. It seeks records from August 2023 through present.

The subpoena is modified and limited to documentation related to the provision and implementation of Student's behavior services for the period of August 2023, through February 25, 2026. The subpoena is modified to exclude communications that fall outside of the areas identified above.

DOCUMENTS RELATED TO BERKELEY UNIFIED SCHOOL DISTRICT'S PROVISIONS OF SPECIAL EDUCATIONS SERVICES FROM AUGUST 2023 THROUGH THE PRESENT DATE.

Berkeley contends the request is overly broad and vague due to Student's definition for "documents" and "relate/relating to," because it includes communications without specifying the specific individuals for which communications are requested and does not specify the specific services referred to. The request is overly broad. The request seeks records outside the statutory period.

The subpoena is modified and limited to documentation, related to the provision and implementation of Student's special education services for the period of August 2023, through February 25, 2026. The subpoena is modified to exclude communications that fall outside of the areas identified above.

DOCUMENTS RELATED TO DR. KRISTIN GROSS' INDEPENDENT EDUCATIONAL EVALUATION OF STUDENT.

Berkeley contends that the request is overly broad because it does not have a time period attached to it and seeks communications from unidentified individuals which creates an undue burden for the District. The request identifies the time period as the 2024-2025 school year. The request is overly broad only to the extent that it requests communications from unidentified individuals. The subpoena is modified to exclude communications.

DOCUMENTS RELATING TO STUDENT'S MENTAL HEALTH FROM AUGUST 2023 THROUGH THE PRESENT DATE.

Berkeley contends that the request is overly broad based on Student's definition of "documents" and seeks communications from unidentified individuals creating an undue burden on the District. The request related to Student's mental health is overly broad.

The subpoena is modified and limited to documentation for the period of August 2023, through February 25, 2026. The subpoena is modified to exclude communications that fall outside of the areas of threat assessments and suicidal ideation.

ORDER

1. Berkeley's motion to quash Student's subpoena is granted in part and the subpoena is hereby modified. Berkeley shall produce documents for the time periods indicated as specified above in this order. Berkeley shall produce all documents in the areas identified in the order by the first day of the due process hearing, May 5, 2026.

Katherine Roe
Katherine Roe (Apr 28, 2026 16:05:48 PDT)

Katherine Roe
Administrative Law Judge
Office of Administrative Hearings