BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024070468

ORDER GRANTING IN PART MOTION TO QUASH SUBPOENA OF PALO ALTO AS AN ENTITY AND ORDER DENYING MOTION TO SHORTEN TIME

NOVEMBER 22, 2024

On November 12, Student issued a subpoena duces tecum on Palo Alto and Person Most Knowledgeable, seeking 15 categories of documents. The subpoena sought production of the requested documents the first day set for hearing on November 26, 2024.

On November 14, 2024, Palo Alto filed a motion to quash the subpoena duces tecum of Palo Alto's Person Most Knowledgeable on the grounds that it was untimely, unsupported by a statement of necessity, and unreasonable.

On November 14, 2024, Student re-issued the subpoena, modifying the entity subpoenaed solely as "Palo Alto Unified School District." This iteration of the subpoena sought production of the requested documents on December 5, 2024, and included a statement of necessity for the records sought.

On November 15, 2024, before prehearing conference, Student filed an opposition to Palo Alto's motion to quash, and a cross-motion that OAH shorten the time for Palo Alto's compliance with Student's originally-requested production date of November 26, 2024. Prehearing conference was held on November 15, 2024, and the parties presented oral argument on the motions as well as the newly-issued subpoenas.

The foregoing recitation of filing dates takes into account that any filing with the Office of Administrative Hearings after 5:00 pm is deemed filed the following business day (Cal. Code of Regulations, § 1006).

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.

PALO ALTO'S UNTIMELINESS OBJECTION AND STUDENT'S MOTION TO SHORTEN TIME

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." 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.

Palo Alto objected to the subpoenas as untimely because 20 days did not exist between Student's issuance of the subpoenas duces tecum on Palo Alto as an entity on November 12, 2024, and the date set for production on the first day of hearing on November 26, 2024. Further, Palo Alto argued that the untimeliness of the subpoenas was uncurable because latest date for production could only have been at least five business days before hearing, or November 19, 2024, which was the deadline by which the parties should have disclosed any evidence they planned to introduce at hearing. (Ed. Code, 56505(e)(7).) At the earliest, parties have access to the documents witnesses upload to Case Center the day of hearing, but usually not until the time for the respective witness's testimony. Palo Alto will not be prejudiced by a production date of December 5, 2024, allowing 20 days from date of re-issuance of the most recent subpoenas.

In the motion to shorten time, Student argued that Student should be excused from the 20-day requirement, because it issued the original subpoena on November 12, 2024, as soon as possible after Student became aware that a subpoena on Palo Alto was necessary. At PHC, Palo Alto opposed Student's cross-motion to shorten time for compliance.

On November 14, 2024, Student re-issued the subpoenas duces tecum on Palo Alto as an entity, making the new date for production December 5, 2024, or 21 days from issuance. Hearing in this matter is set to begin on November 26, 2024. The parties anticipate needing anywhere from 9-12 days for hearing. Taking into account the state holidays on November 28 and 29, December 5 falls within the time anticipated for hearing. Student did not establish good cause to shorten the time for Palo Alto's compliance with the subpoena duces tecum because Student has cured any

untimeliness by re-issuing the subpoena and making production due on December 5, 2024, over 20 days from issuance. Student's motion to shorten time is denied.

STATEMENT OF NECESSITY

Subpoenas must make a 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.) In its motion to quash, Palo Alto argued that the subpoenas duces tecum issued on November 12, 2024, were invalid because they did not include a statement of necessity for the records sought. In the November 14, 2024, re-issued subpoena, Student included a statement of necessity with each category of documents sought.

At PHC, Student's counsel withdrew Items 1, 2, 14, and 15 of the subpoena. Only the remaining Items of the subpoena, Items 3 – 13, are addressed in this Order. Student's subpoena sought the following:

3. All documents reflecting efforts made by the Palo Alto Unified School District and its agents and employees to train staff working with [Student] on ELD approaches for [Student's] needs during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years, including, but not limited to agendas, training materials, emails, schedules indicating dates of training, etc.;
4. All documents reflecting efforts made by Palo Alto Unified School District and its agents and employees to train staff working with [Student] on toileting and/or catheterization for [Student's] needs during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school

years, including, but not limited to agendas, training materials, emails, schedules indicating dates of training, etc.;

5. All documents reflecting efforts made by Palo Alto Unified School District and its agents and employees to train staff working with [Student] on PT for [Student's] needs during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years, including, but not limited to agendas, training materials, emails, schedules indicating dates of training, etc.;
6. All emails sent to Palo Alto Unified School District employees referencing [Student]; or her student ID number, during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years;
7. All SIRAS Systems or other tracking program used by Palo Alto Unified School District progress reports for [Student] during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years;
8. Any documents indicating caseloads for the AAC providers assigned to [Student] during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years;
9. Any documents indicating caseloads for the speech and language providers assigned to [Student] during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years;
10. Any documents indicating caseloads for the PT providers assigned to [Student] during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years;
11. Any documents indicating caseloads for the OT providers assigned to [Student] during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years;

12. Records of all off-campus trips taken by [Student's] classroom during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years;
13. Records of all off-campus trips taken by [Student] specifically during the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years.

Student did not make a showing of reasonable necessity for the items sought in Request 7. Student's statement of necessity in support of Request 7 states that the SIRAS System and other tracking programs are educational records and should be produced. But Request 7, as worded, seeks the programs themselves, which Palo Alto describes as software programs. Student did not establish that seeking the software programs, and not the documents contained therein, is a discoverable request or necessary to establish Student's FAPE claims.

Student did not make a showing of reasonable necessity for the items sought in Requests 8-11. Requests 8-11 seek documents regarding caseloads for service providers. Student's explanation for these requests is that understanding providers' caseloads would help Student understand why Student's IEP was not being implemented. Understanding why an IEP was not implemented is not relevant to an implementation claim. The statement of necessity for Requests 8-11 did not establish how the documents sought were relevant to an issue pled. Further, the documents sought would also likely unnecessarily implicate the private, personal information of other students.

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. Based on the foregoing, Requests 7 and 8-11 are quashed.

SCOPE OF THE SUBPOENAS

Palo Alto objected to the subpoena as unreasonable for being overly broad in scope. Palo Alto's motion to quash included a declaration by its Director of Special Education, describing the degree of effort that production would likely entail, namely, the involvement of 35 individuals, including current and former staff members, some of whom are no longer employed by the district. The declaration did not explain, in any detail, the extent or type of effort needed to comply with each production request, the particular facts that caused Palo Alto to believe such an effort would be so great, which production requests could only be addressed by former staff members and why, or why current staff members could not address the production requests, and was unpersuasive.

Student's remaining requests only seek documents about Student in particular, and limit the requests to particular school years. The balance of the requests remaining, specifically, Requests 3 – 6 and 12-13, are not overbroad.

ORDER

1. Palo Alto's motion to quash Student's subpoenas on Palo Alto as an entity is granted in part and the subpoena is hereby modified as follows: Requests 7 – 11 are quashed.

2. Counsel for Student shall immediately serve a copy of this order on the person(s) authorized to receive service on behalf of Palo Alto as an entity.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings