BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ADELANTO ELEMENTARY SCHOOL DISTRICT, DESERT MOUNTAIN SPECIAL EDUCATION LOCAL PLAN AREA, AND DESERT MOUNTAIN CHILDREN'S CENTER.

OAH CASE NUMBER 2025060065

ORDER GRANTING MOTION TO QUASH SUBPOENAS DUCES TECUM

AUGUST 27, 2025

On June 2, 2025, Student filed a request for due process naming Adelanto Elementary School District. On July 31, 2025, Student filed a motion to amend his due process complaint, to include new issues and Desert Mountain Special Education Local Plan Area, called SELPA, and Desert Mountain Children's Center, as respondents. On August 5, 2025, the Office of Administrative Hearings, called OAH, granted Student's motion to amend.

On July 31, 2025, Adelanto issued a subpoenas duces tecum on Cognitive Diagnostic Associates, and four of their assessors: Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas. Adelanto did not establish that it concurrently sent Student notice to consumer advising Student of the subpoenas. Adelanto did send Student copies of the four subpoenas.

The subpoenas to Cognitive Diagnostic Associates, and four of their assessors, sought various documents, including assessment reports and drafts, assessment protocols and rating scales, notes, special education records reviewed by the assessors, and communications between the assessors and various specified individuals. Adelanto filed a copy of these subpoenas with OAH on August 1, 2025. Adelanto did not file a notice to consumer with the subpoenas.

On August 14, 2025, Student filed a motion to quash the subpoenas on the grounds that the subpoenas seek privileged information, that the information sought is already included in the final independent educational evaluation reports available to Adelanto, and that the information sought is not relevant. Student also asserts that Adelanto did not provide Student with the required notice to consumer with the July 31, 2025 subpoenas. Student supported his motion with a sworn declaration from Parent, and authenticated copies of the four subpoenas.

Adelanto did not file an opposition to Student's motion.

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.

FAILURE TO SERVE CONSUMER NOTICE

California law requires that a Notice to Consumer be served on the subject of a subpoena for personal records not less than 10 days prior to the date for production of records plus the additional time required based on the method of service per Code of Civil Procedure section 1013. (Code Civ. Proc., § 1985.3, subd. (b).) Personal records are those records, whether maintained on paper or electronically, that are sought from those providing personal service to a party such as health care providers, psychiatrists, bankers, pharmacists, laboratories, insurance companies, telephone service providers and schools to name a few. (Code Civ. Proc., § 1985.3, subd. (a)(1).) The proof of service of the notice to consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).)

Student asserts that the subpoenas at issue seek personal records and no notice of consumer was served. Adelanto did not refute this contention. Therefore, it is uncontroverted that Adelanto failed to provide Student with the required notice to

consumer with the July 31, 2025 subpoenas. Moreover, Adelanto did not file a copy of the required notice to consumer with the subpoenas it filed with OAH on August 1, 2025.

The records sought by the subpoenas are personal records. (Code Civ. Proc., § 1985.3, subd. (a)(1).) Adelanto's failure to provide Student with the required notice to consumer renders the subpoenas invalid. Accordingly, all four subpoenas are quashed.

This Order does not discuss or evaluate any of Student's substantive objections to Adelanto's subpoenas. Rather, this Order quashes the July 31, 2025 subpoenas on only procedural grounds. Adelanto may choose to issue additional subpoenas that meet all legal requirements. This Order does not prevent Student from moving to quash those subpoenas, should Adelanto do so.

ORDER

1. Student's motion to quash Adelanto's subpoenas duces tecum to Cognitive Diagnostic Associates, and Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas is GRANTED.
2. Adelanto failed to properly serve Student with the required Notice to Consumer.
3. The subpoenas for records to Cognitive Diagnostic Associates, and Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas are hereby quashed.
4. Counsel for Adelanto shall immediately serve a copy of this Order on Cognitive Diagnostic Associates, and Ashley Schwenn, Sarah Meeks, Chelsea Swopes, and Kathryn Haas.

5. Adelanto may choose to issue additional subpoenas that meet all legal requirements.
6. This Order does not prevent Student from moving to quash those subpoenas, should Adelanto do so.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings