

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SANTA ANA UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2020120730

ORDER GRANTING MOTION TO QUASH SUBPOENA

NOVEMBER 1, 2021

On December 18, 2020, Student filed a request for due process naming Santa Ana Unified School District. On September 1, 2021, Student filed a second amended request for due process. On September 1, 2021, a scheduling order was issued for the second amended request.

On October 11, 2021, Santa Ana issued a subpoena duces tecum on California State University, Long Beach. A notice to consumer was sent to Student advising Student of the subpoena directed to California State University, Long Beach. Copies of the subpoena were sent to Student with the notice to consumer. The subpoena to California State University, Long Beach, sought effectively all records related to Student from California State University, Long Beach, including admissions submissions, transcripts, admissions test scores, class attendance, dropped courses, disciplinary

actions, class scheduling and/or course selection, academic progress and standing, school personnel comments, communication logs, observation notes, correspondence, and special education.

On October 21, 2021, Student filed a motion to quash the subpoena duces tecum on the grounds that the subpoena did not seek relevant information, was exceptionally overbroad in scope, sought privileged or confidential information, and was not reasonably necessary. On October 25, 2021, Santa Ana opposed the motion arguing that the subpoena sought relevant information, was not overbroad, did not seek privileged or confidential information, and was reasonably necessary to Santa Ana's defense of the case. On October 26, 2021, Student filed a response to Santa Ana's opposition.

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.

REASONABLE NECESSITY FOR THE RECORDS

Student argues that the subpoena 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.)

Santa Ana's declaration in support of the subpoena states that the requested records are reasonably necessary to Santa Ana's ability to defend itself against Student's contentions regarding Santa Ana's alleged failures to offer appropriate educational

services, as well as to contest Student's requested remedy of compensatory education. Student's motion to quash, among other things, challenges the relevance of the requested documents as the information sought is remote in time from the time period at issue in Student's allegations and thus not reasonably related to the issues.

Santa Ana's declaration fails to establish that the subpoenaed documents are material and relevant. Santa Ana fails to describe or explain how records from the state university Student began attending this school year have any relevance to Student's allegations of a denial of a free appropriate public education, called a FAPE, dating to late 2018 and early 2019 (Student's Issues Nos. 1 and 2). Santa Ana similarly fails to describe or explain how records from the state university are relevant to Student's allegations that Santa Ana failed to meet prior written notice provisions in relation to Covid-19 closures during Student's time in high school (Student's Issue No. 3). Santa Ana also fails to describe or explain how records from the state university are relevant to Student's allegations that the September 18, 2020 individual education program, called an IEP, failed to offer Student a FAPE (Student's Issue No. 4).

The subpoena that was issued failed to comply with the requirement that it be accompanied by a declaration establishing reasonable necessity for production of the records. Here, Santa Ana was not able to articulate any reasonable basis for needing records from Student's fledgling college career to defend against allegations that Santa Ana denied Student a FAPE during Student's time attending high school in Santa Ana prior to graduation in the Spring of 2021. There is simply no nexus between Student's high school experience, as viewed through the static filter of a FAPE denial, and Student's circumstances at the state university. 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. Because Santa Ana failed to establish good

cause for production of the records sought by the subpoena duce tecum, the subpoena cannot be modified, and shall be quashed in its entirety.

ORDER

1. Student's motion to quash Santa Ana's subpoena to California State University, Long Beach is GRANTED. The subpoena for records to California State University, Long Beach is hereby quashed.
2. Counsel for Santa Ana shall immediately serve a copy of this order on California State University, Long Beach.

IT IS SO ORDERED.

Ted Mann

Ted Mann

Administrative Law Judge

Office of Administrative Hearings