

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

DEL MAR UNION SCHOOL DISTRICT,

OAH CASE NUMBER 2021060708

OAH CASE NUMBER 2021110007

ORDER GRANTING MOTION TO QUASH SUBPOENA

DECEMBER 9, 2021

This matter is scheduled for hearing on December 14, 15, and 16, 2021. On December 6, 2021, before the prehearing conference, or PHC, in this matter, Del Mar Union School District filed a Motion to Quash Subpoena Duces Tecum. Del Mar's motion did not include a copy of any subpoena(s) duces tecum to which it objected. At the time of the PHC, Student had not filed any subpoenas with OAH.

At the PHC, OAH ordered Del Mar to file a copy of the subpoena(s) duces tecum that were the subject of its motion. OAH also ordered Student to file any subpoenas that it had issued in this matter with OAH by close of business that same day. OAH gave Student until 3:00 pm on Wednesday, December 8, 2021, to file any opposition to

Del Mar's motion to quash, and also ordered the parties to meet and confer in an effort to reach a mutually agreeable solution to Student's subpoenas and Del Mar's motion to quash the same.

After the PHC on December 6, 2021, Del Mar filed its Corrected Motion to Quash Subpoena Duces Tecum. The corrected motion included the subpoenas duces tecum to which Del Mar objected. Namely, Del Mar objected to the subpoenas duces tecum for Nadine Schick, Bree Dambacher, Aimee Aziser, Megan Money, Sarah Graham, Heather Chamberlin, and Kristin Rottino that sought from each witness "all email communications between District employees and [P]arent, IEP team members, outside service providers."

Del Mar objected on the grounds that Student failed to establish reasonable necessity for the requested documents, the documents sought are not relevant to the case, and the documents sought are overly broad and vague. Student did not file an opposition Del Mar's motion.

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 is in

addition to 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, 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

Del Mar argues that the subpoenas duces tecum should be quashed because they fail 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.)

Here, Student made no statement of the basis for the need for the records. Accordingly, the subpoenas failed to comply with the requirement that they be accompanied by a declaration establishing reasonable necessity for production of the records.

SCOPE OF THE SUBPOENA

Del Mar contends that the subpoena is overly broad as Student's subpoenas do not specify any time frame for the documents sought, and would include documents related to other students. Further, Del Mar argues that since Parent is a Del Mar employee, emails between Parent and Del Mar employees may not relate to Student at all. Student has failed to provide any basis for needing "all email communications between District employees and [P]arent, IEP team members, outside service providers." Student made no attempt to limit its subpoena to communications about Student. The scope of Student's subpoenas duces tecum is impermissibly overbroad.

ORDER

1. Del Mar's motion to quash Student's subpoenas duces tecum to Nadine Schick, Bree Dambacher, Aimee Aziser, Megan Money, Sarah Graham, Heather Chamberlin, and Kristin Rottino is GRANTED.
2. Counsel for Student shall immediately serve a copy of this order on the persons subpoenaed.

Claire Yazigi

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Administrative Law Judge

Office of Administrative Hearings