

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PLEASANTON UNIFIED SCHOOL DISTRICT,

and

PARENT ON BEHALF OF STUDENT,
OAH CASE NUMBER 2021110737
OAH CASE NUMBER 2021100357

ORDER GRANTING MOTION TO QUASH SUBPOENA
DUCES TECUM

DECEMBER 13, 2021

This consolidated matter is currently scheduled for hearing beginning
December 21, 2021.

On December 6, 2021, Student issued a subpoena duces tecum to Pleasanton Unified School District's Custodian of Records. The subpoena calls for the production of documents on December 14, 2021, pursuant to the Office of Administrative Hearings' or OAH's procedures for the electronic upload of documents into the Caselines evidence platform. Specifically, Student requests production of, "all student records, notes (any

form), emails, texts, Google Chat Logs from IEP meetings, the SEIS Audit Trail regarding [Student] from April 1, 2020 to present.”

On December 8, 2021, Pleasanton filed a motion to quash this subpoena duces tecum on the grounds it was not timely served, impermissibly requested prehearing discovery, and failed to make a showing of reasonable necessity. Pleasanton failed to include a copy of the disputed subpoena. On December 9, 2021, Student filed an opposition. Student argues she timely re-issued the subpoena to reflect the continued hearing date and proposed that OAH may modify the date of production if deemed untimely. Student argues the subpoena does not call for prehearing discovery as OAH requires documents to be uploaded prior to hearing for the Administrative Law Judge’s viewing only, and that all requested records are relevant. Student had not filed a copy of the subpoena with OAH.

On December 9, 2021, OAH issued an order requiring the parties to file a copy of the disputed subpoena. On December 10, 2021, Student filed an authenticated copy of the subpoena in question, along with two prior subpoenas. On December 10, 2021, Pleasanton filed a reply and attached many subpoenas for testimony and subpoenas for records. The only subpoena at issue in Pleasanton’s motion to quash and in this Order is the subpoena duces tecum issued December 6, 2021, to the Custodian of Records.

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).) The “reasonable necessity” standard is a distinct , more stringent standard than the “good cause” standard articulated in the Code of Civil Procedure section 1985, subdivision (b). Section 1985, subdivision (b) 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 FOR THE RECORDS

Pleasanton argues, in part, 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 factual showing of why the requested documents are material and relevant to the hearing 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.)

Student's declaration in support of the subpoena states, "The records and other things required by this subpoena are reasonably necessary to the proper presentation of this case for the time in question." This conclusory statement fails to meet the requisite showing of reasonable necessity. Here, Student made no statement of the basis for the need for the records, or why use of the subpoena process is necessary in light of Student's ability to request student records under the Education Code. Accordingly, the subpoena failed to comply with the requirement that it be accompanied by a declaration establishing reasonable necessity for production of the records. Having determined the subpoena failed to make the required showing of reasonable necessity, there is no need to address the other asserted grounds to quash the subpoena.

ORDER

1. Pleasanton's motion to quash Student's subpoena duces tecum issued December 6, 2021, is Granted. The subpoena for records to Pleasanton's Custodian of Records is hereby quashed.
2. Counsel for Student shall immediately serve a copy of this order on Pleasanton's Custodian of Records.

Theresa Ravandi

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Administrative Law Judge

Office of Administrative Hearings