

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ROCKLIN UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2021120714

ORDER GRANTING MOTION TO QUASH SUBPOENA

FEBRUARY 23, 2022

On December 21, 2022, Parent on behalf of Student filed a request for a due process hearing naming Rocklin Unified School District and Elk Grove Unified School District. On January 31, 2022, an order granting a continuance in this matter was granted scheduling the case for hearing on February 15, 16, and 17, 2022. On February 8, 2022, Elk Grove was dismissed from this matter as Student and Elk Grove reached a settlement agreement. The sole issue remaining in the pending due process hearing is: "Did Rocklin Unified School District deny Student a FAPE by failing to follow Student's health plan incorporated by reference in the October 5, 2021, IEP?"

On February 14, 2022, Student issued a subpoena duces tecum on Roger Stock, Superintendent of Rocklin Unified School District. The subpoena to Superintendent Stock sought his testimony on February 22, 2022, as well as the production of "all

documents pertaining to Respondent's procedures for medical action and/or medical training at Breen Elementary School."

On February 16, 2022, Rocklin filed a motion to quash the subpoenas on the grounds that testimony from Superintendent Stock would be cumulative, the request for records was overbroad, and the affidavit supporting the subpoena was deficient. On February 22, 2022, Student opposed the 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).) 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

Rocklin argues 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 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.) Rocklin also argues that the subpoena is overbroad and requests documents not relevant to the due process hearing.

Student's declaration in support of the subpoena states "student alleges proper procedures were not followed in response to medical emergency; supt [sic] required to appear to explain implementation and formulation of procedures and training policies." Rocklin contends that the medical procedures related to the case are included within Student's health care plan, which is already submitted into evidence.

Student's declaration fails to establish that the subpoenaed documents are material and relevant to the sole issue in the due process hearing: Rocklin's alleged failure to implement Student's health care plan incorporated by reference in the October 5, 2021, IEP. The procedures Rocklin was required to follow are documented in the health care plan. Student has not demonstrated reasonable necessity for "all documents pertaining to Respondent's procedures for medical action and/or medical training at Breen Elementary School."

SUBPOENA FOR ATTENDANCE OF WITNESS

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)." Thus, subpoenas are available to require the production of information that is reasonably necessary for a party to present their case at hearing.

In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in California Civil Code. California Civil Code section 1985 governs the issuance of subpoenas. In accordance with the California Civil Code, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced. A subpoena for the attendance of a witness must also meet the good cause requirement by a factual showing of why the testimony and/or production of records 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.)

Student has not shown good cause for the testimony of Superintendent Stock. Student argued that Superintendent Stock has general supervisory obligations over the school district at large. However, the single issue in the pending due process hearing relates to the implementation of procedures in Student's health care plan incorporated by reference into the October 5, 2021, IEP. Superintendent Stock was not directly involved in the implementation of Student's health care plan or IEP and is therefore not a relevant witness in the hearing.

Additionally, Student's subpoena is procedurally defective in that it requires his testimony on February 22, 2022, a day in which the hearing is not proceeding. Although an ALJ may modify a subpoena to correct such errors, such a modification is not warranted as Student has failed to demonstrate that Superintendent Stock is a relevant witness.

ORDER

1. Rocklin's motion to quash Student's subpoena to Roger Stock, Superintendent of Rocklin Unified School District, GRANTED. The subpoena for records and testimony to Superintendent Stock is hereby quashed.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings