

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 IN PART AND DENYING IN PART

MOTION TO QUASH SUBPOENAS

FEBRUARY 16, 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.

On February 9 and 10, 2022, Rocklin issued subpoenas duces tecum on Kaiser Permanente Roseville Medical Center and Sutter Medical Plaza Rocklin. Copies of the

subpoenas were sent to Student's counsel with the Notice to Consumer. The subpoenas to Kaiser Permanente and Sutter Roseville sought from each agency:

1. Any and all notes taken during or after patient intake of Student from December 2, 2021 to present.
2. Any and all labs, test results, blood work pertaining to Student's seizure medication from December 2, 2021 to present.
3. Any and all service logs, notes, and/or summaries regarding Student from December 2, 2021 to present.
4. Any and all medical records, doctor's orders, and/or notes regarding Student from December 2, 2021 to present.
5. Any and all communications, notes, and/or summaries regarding impressions of Parent or Student's physical well-being in her custody.
6. Any and all child abuse and neglect reports (CANRA mandated report) and/or Child Protective Services report filed from December 2, 2021 to present.

On February 10, 2022, Student filed a motion to quash the subpoenas on the grounds that the subpoenas are over-broad, intrusive, and procedurally defective. On February 14, 2022, Rocklin opposed the motion arguing that Student's motion did not prove the subpoenas were not reasonably necessary for Rocklin to defend itself in the due process hearing. On February 14, 2022, Student filed a response to Rocklin'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.

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).)

Rocklin served Student's attorney with the Notice to Consumer on February 4, 2022. Student's attorney brought the complaint in the current matter for both parents on behalf of Student. As such, Student's motion to quash on the basis that Rocklin did not serve Student's parents with a Notice to Consumer is denied.

REASONABLE NECESSITY FOR THE RECORDS, SCOPE OF THE SUBPOENA AND MEDICAL PRIVACY

Student argues that the subpoenas duces tecum should be quashed because Rocklin has not shown reasonable necessity for the documents, the subpoenas are overbroad, and because the subpoenas intrude upon Student's medical privacy. Additionally, the subpoenas request confidential records relating to child welfare investigations and orders.

Subpoenas duces tecum must show a 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.)

California law recognizes a constitutional right to privacy in an individual's medical history. (See, *Pettus v. Cole*, (1996) 49 Cal. App. 4th 402, 440.["the 'zones of privacy' created by Article 1 , section 1 of the California Constitution extend to the details of one's medical history"]; *Palay v. Superior Court*, (1993) 18 Cal. App. 4th 919, 932, ["Fundamental to the privacy of medical information is the ability to control its circulation ..."] The constitutional right of privacy is not absolute, but is subject to invasion where a compelling public interest is involved. (*Freed v. Home Depot U.S.A, Inc.* (S.D. Cal. Jan. 14,2019, Case No.: 18cv359-BAS (LL)) 2019 W.L. 183833, *5; *Hill v. National Collegiate Athletic Association* (1994) 7 Cal. 4th 1, 37.) State law governs an individual's right to privacy in a civil matter. (Fed. Rule Evid. 501; *Freed v. Home Depot U.S.A., supra*, 2019 WL 183833.) A court must construe any claim of waiver, due to placing medical matters at issue, narrowly and the competing compelling interest is found only where it is established that the material sought is directly relevant to the litigation. (*Freed, supra*, at *5 citing *Tylo v. Superior Court* (1993) 55 Cal. App 4th 1379, 1387.)

Rocklin's two subpoenas include requests for six types of documents. Requests One, Two, and Three request:

1. Any and all notes taken during or after patient intake of Student from December 2, 2021 to present.
2. Any and all labs, test results, blood work pertaining to Student's seizure medication from December 2, 2021 to present.

3. Any and all service logs, notes, and/or summaries regarding Student from December 2, 2021 to present.

Student's Motion to Quash is granted as to requests One, Two, and Three. Rocklin's request is overbroad and Rocklin did not establish reasonable necessity for these documents in the pending due process hearing. Student has not placed their entire medical history at issue by alleging Rocklin failed to implement Student's health plan in response to a seizure incident on one day. Student maintains their right to privacy as to medical matters not at issue in this case. (*Freed, supra*, at *5. ["The party seeking the constitutionally protected information bears the burden of establishing that the information is directly relevant to the claims at issue."].)

Rocklin's request number Four asks for:

4. Any and all medical records, doctor's orders, and/or notes regarding Student from December 2, 2021 to present.

Student's Motion to Quash request Four is denied, but Student's Motion to Limit is granted. Section 1987.1 of the Code of Civil Procedure, provides that a court may make an order quashing a subpoena entirely, or modifying it. Rocklin's subpoena is modified as follows:

Any and all medical records, doctor's orders, and/or notes specifically relating to a medical incident Student may have suffered on December 2, 2021, and any subsequent medical issues directly caused by the December 2, 2021, medical incident that may have impacted his education from December 2, 2021, through February 14, 2022.

Rocklin also requests the following documents in Five and Six:

5. Any and all communications, notes, and/or summaries regarding impressions of Parent or Student's physical well-being in her custody.
6. Any and all child abuse and neglect reports (CANRA mandated report) and/or Child Protective Services report filed from December 2, 2021 to present.

Student's Motion to Quash is granted as to Five and Six. The applicable standard requires a statement of "reasonable necessity" designating the "exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case." Here, the subpoenas as written were overbroad. Additionally, CANRA mandated reporting is protected as confidential by Penal Code section 11167.5.

ORDER

1. Student's motion to quash Rocklin's subpoenas to Kaiser Permanente Roseville Medical Center and Sutter Medical Plaza Rocklin is granted as to Requests One, Two, Three, Five, and Six.
2. Student's motion to quash Rocklin's subpoenas to Kaiser Permanente Roseville Medical Center and Sutter Medical Plaza Rocklin is denied as to Request Four. However, Student's Motion to Limit is granted. Rocklin's subpoenas are hereby modified to include only: Any and all medical records, doctor's orders, and/or notes specifically relating to a medical incident Student may have suffered on December 2, 2021, and any subsequent medical issues directly caused by the December 2, 2021, medical incident that may have impacted his education from December 2, 2021, through February 14, 2022.
3. Kaiser Permanente Roseville Medical Center and Sutter Medical Plaza Rocklin shall timely deliver Student's records by uploading the subpoenaed documents in CaseLines.

4. Counsel for Rocklin shall immediately serve a copy of this order on Kaiser Permanente Roseville Medical Center and Sutter Medical Plaza Rocklin.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings