

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

BURTON SCHOOL DISTRICT.
OAH CASE NUMBER 2024030145

ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO QUASH SUBPOENA

APRIL 5, 2024

On March 5, 2024, Parent on behalf of Student filed with the Office of Administrative Hearings, OAH, a request for due process hearing naming Burton School District, called Burton. Student's case was designated as a dual case, with both expedited and non-expedited hearings. On March 6, 2024, OAH issued a scheduling order scheduling the expedited hearing in this case for April 9, through 11, 2024.

On March 22, 2024, Student issued a subpoena to produce records on Heather Rodriguez, Director of Special Education—for Burton School District. The subpoena to Ms. Rodriguez sought the following records to be produced on April 9, 2024:

1. All emails, letters, text messages, voicemails, or other correspondence between [Burton] staff from August 9, 2023, to March 5, 2024, regarding any of the following topics:
 - a. Student's behavior;
 - b. Student's mental health;
 - c. Student's academics; and
 - d. Student's attendance.
2. From August 9, 2023, through the present, any and all service logs, session notes, progress monitoring notes, internal documents, or memorandums that are maintained by any [Burton] staff regarding the provision of Student's related services, including but not limited to:
 - a. Specialized Academic Instruction;
 - b. Language and Speech;
 - c. Educationally Related Mental Health Services;
 - d. Counseling Services;
 - e. Occupational Therapy; and
 - f. Behavior Intervention Services.
3. Any and all video footage capturing the alleged behavioral incidents on October 25, October 30, and October 31, 2023.
4. All emails, internal documents and memorandums sent or received by any employee of [Burton] between the dates of August 9, 2023, and March 5, 2024, concerning any of the following topics:
 - a. [Student's] transfer from Oak Grove Elementary to Burton Elementary;
 - b. Use of restraints or seclusion on [Student]; and
 - c. Instances where [Student] was sent home early from school.

5. All District policies regarding:
 - a. Expulsion and involuntary transfers;
 - b. Interim Alternative Education Removals; and
 - c. Recordkeeping for behavioral and disciplinary incidents.

The subpoena to Ms. Rodriguez expressly requested that Burton redact any personally identifiable or FERPA-protected information concerning other students.

On March 28, 2024, Burton filed a motion to quash the subpoena on the grounds that Student had failed to demonstrate a reasonable necessity, and that the categories of records were overbroad, burdensome, or oppressive, and lacking reasonable specificity. On March 29, 2024, Student filed an opposition to the motion to quash.

Also on March 29, 2024, OAH issued an Order Following Prehearing Conference in which Student's issues were discussed and limited to expedited issues only, striking non-expedited issues and remedies involving denials of a free appropriate public education.

A party to a due process hearing under the Individuals with Disabilities Education Act, or IDEA, 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, the hearing officer has the right to issue subpoenas to produce documents or papers on a showing of reasonable necessity by the 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 to produce records. 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 declares, including protective orders.

Burton argues the subpoena to produce records 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. Student's declaration in support of the subpoena states:

Student requested a full and complete copy of his educational file on February 29, 2024. Burton produced Student's file on March 5, 2024. Burton failed to provide complete records, and in most cases provided no records, responsive to the items requested above as part of its production

of Student's educational records. Thus, except through this subpoena, Student has no access to any of the documents listed here.

Student's declaration establishes that some, but not all, the documents subpoenaed are reasonably necessary to Student's expedited case.

In Document Request 1, some but not all documents subpoenaed are reasonably necessary to Student's expedited case. Document Request 1a and 1b request documents regarding Student's behavior and mental health which are reasonably necessary to Student's case in proving Student has not caused serious bodily injury to anyone between August 9, 2023, and March 5, 2024.

Document Request 1d regarding attendance is relevant to establish the amount of time Student attended an interim alternative educational setting and whether a manifestation determination review was required between August 9, 2023, and March 5, 2024.

Document Request 1c requesting documents related to Student's academics is not relevant to the expedited issues as clarified in the Order Following Prehearing Conference.

In Document Request 2, some but not all documents subpoenaed are reasonably necessary to Student's expedited case. The documents requested in 2c for educationally related mental health, 2d for counseling, and 2f for behavior intervention services are relevant to Student's claim that Burton failed to comply with the IDEA's manifestation determination review requirements.

Document Request 2a, 2b, and 2e, requesting documents relating to specialized academic instruction, speech and language, and occupational therapy are not relevant to the expedited issues as clarified in the Order Following Prehearing Conference.

Document Request 3 for video footage of the alleged behavioral incidents on October 25, October 30, and October 31, 2023, is material and relevant to Student's claim that special circumstances did not exist for his placement in an interim alternative educational setting.

Document Request 4 concerning Student's transfer between schools, restraints and seclusion, or incidents of being sent home early, are also material and relevant to Student's claim that his behaviors did not support a disciplinary change of placement, and that the interim alternative educational setting is inappropriate.

Student's declaration does not establish that Document Request 5 regarding the school district's policies are material or relevant to any of the expedited issues. Student must prove that Burton's actions or inactions violated the IDEA or California special education law, not Burton's policies.

Burton cites *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, holding that emails not maintained in an educational file are not directly related to the private interests of the student, restricts Student's right to production of such emails. However, *BRV, Inc.* involved a Public Records Act request, and the Court of Appeal found a student's right to privacy in educational records did not exempt from disclosure of documents not included in the student's educational file. In other words, *BRV, Inc.* found records not in a student's educational file entitled to less protection from disclosure than educational records.

BRV, Inc. cited cases noting that Congress, in defining educational records for the Family Educational Rights and Privacy Act, known as FERPA, intended that parents and students should have access to everything in institutional records maintained for each student in the normal course of business and used by the institution in making decisions that affect the life of the student. (*BRV, Inc., supra*, 143 Cal.App.4th at p. 753, citing *Belanger v. Nashua, New Hampshire, School Dist.* (D.N.H. 1994) 856 F.Supp. 40, 50.) The authority cited by Burton does not support its contention that Student should broadly be denied the documents sought by Student's subpoena.

Student's document categories are not overbroad. They are limited in time to a narrow six-month period, by reference to Student, and by specific topic relevant to this expedited due process hearing.

Burton has not established that production of the documents sought is burdensome or oppressive.

Student's requests are sufficiently specific.

The subpoena that was issued complied with the requirement that it be accompanied by a declaration establishing reasonable necessity for production of the records in Document Requests 1a, 1b, 1d, 2c, 2d, 2f, 3 and 4.

Student's declaration did not establish reasonable necessity for production of the documents in Document Request 1c, 2a, 2b, 2c and 5.

Burton's motion to quash is granted in part for the documents requested in Document Requests 1c, 2a, 2b, 2c and 5.

Burton's motion is denied for the documents requested in Document Requests 1a, 1b, 1d, 2c, 2d, 2f, 3 and 4. The subpoenaed documents shall be electronically

uploaded pursuant to the instructions contained in the OAH instructions served with the subpoena.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Judith Pasewark".

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings