

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024041077

ORDER QUASHING SUBPOENAS DUCES TECUM

JUNE 13, 2024

On April 26, 2024, Student filed a request for due process hearing, complaint, with the Office of Administrative Hearings, OAH, naming Clovis Unified School District. OAH granted Student's motion for leave to file an amended complaint on May 24, 2024. On June 12, 2024, OAH granted the parties request for continuance, scheduling the case for hearing on September 17, 18, and 19, 2024.

On May 23, 2024, Clovis issued a subpoenas duces tecum on Laurice Seely, David Gilberston, Ruth Aguirre, and Christine Villareal. A notice to consumer was sent to Student advising Student of each of the subpoenas. The subpoenas sought production of various documents at the time of the previously scheduled hearing on June 11, 2024.

On June 4, 2024, Student filed a motion to quash each of the subpoenas on various grounds. On June 7 and 10, 2024, Clovis filed oppositions to the motions to quash.

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.

Here, OAH granted the Parties' joint request for continuance, setting the hearing for September 17, 18, and 19, 2024. Accordingly, the subpoenas duces tecum, issued for the hearing on June 11, 2024, are moot. Nothing in this order prevents Clovis from reissuing subpoenas duces tecum returnable on the first day of the continued hearing.

1. Clovis's subpoenas duces tecum issued for hearing on June 11, 2024, are quashed. Nothing in this order prevents Clovis from reissuing subpoenas duces tecum for the continued hearing date.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings