

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

KENTFIELD SCHOOL DISTRICT.
OAH CASE NUMBER 2024070418

ORDER GRANTING IN PART MOTION OF TAMALPAIS
UNION HIGH SCHOOL DISTRICT TO QUASH SUBPOENA

SEPTEMBER 11, 2024

On July 12, 2024, Student filed a notice of remand of OAH Case number 2022010393, Student v. Kentfield School District. On July 12, 2024, OAH issued a scheduling order assigning the present case number to the remanded case, and setting hearing for July 30, 2024. At the July 19, 2024 prehearing conference, the ALJ and parties determined the matter would be decided based on the administrative record, without additional hearing, and the matter was continued at the parties' request for the submission of closing briefs. The prehearing conference order also granted, in part, Kentfield's motion to supplement the administrative record, allowing Kentfield to supplement the administrative record with state standardized test scores and a November 3, 2022 psychoeducational evaluation obtained from Tamalpais Union High

School District. On August 7, 2024, Student filed a motion for reconsideration of OAH's order granting Kentfield's motion to supplement the administrative record, contending, among other things, that Student would be denied due process unless provided an opportunity to present live testimony to rebut Kentfield's supplemental evidence. On August 15, 2024, OAH issued an Order granting in part Student's motion for reconsideration, continuing the matter, and setting hearing of the matter for September 10, 2024.

On August 21, 2024, Student issued, and on August 22, 2024 served, nine subpoenas on Tamalpais, directed to Tamalpais employees Tracy Joseph, Amira Mostafa, Kendall DeAndreis, Tristan Bodle, Beth de Carion, Eunice Hong, Jen Madden, Kristi Perani, and Dave Plescia. The subpoenas called for subpoena respondents Tracy Joseph and Amira Mostafa to appear and produce documents, and for the remaining respondents to produce documents only, at the start of hearing on September 10, 2024. On August 29, 2024, Tamalpais filed a motion to quash all of the subpoenas issued, on the following grounds:

- Student failed to demonstrate reasonable necessity for the testimony of respondents Joseph and Mostafa, or for any of the requested documents.
- The requests for documents were overbroad, and burdensome.
- The requests for documents sought documents protected by the attorney-client privilege.
- The subpoenas for documents were untimely served, providing respondents only 19 days to produce subpoenaed documents, instead of the required 20 days.

At the first day of hearing on September 10, 2024, the ALJ and parties discussed Tamalpais' motion to quash, and the ALJ quashed on grounds of their limited relevance

to consideration of the documents supplementing the administrative record, all of the subpoenas except those directed to two Tamalpais employees subpoenaed to testify at hearing. These were employees Tracy Joseph, a school psychologist who was the primary author of the November 3, 2022 psychoeducational evaluation, and Kendall DeAndreis, a general education teacher who provided general education academic interventions to Student, and who was subpoenaed by Kentfield.

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 TESTIMONY AND RECORDS

Student demonstrated a reasonable necessity for school psychologist Joseph to testify at hearing and produce certain documents relating to the preparation of her November 3, 2022 psychoeducational evaluation of Student introduced by Kentfield as evidence in the administrative record. The information sought is material and relevant. (*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 also demonstrated a reasonable necessity for teacher DeAndreis to produce certain documents relating to the general education interventions she provided Student.

OVERBREADTH AND BURDEN

Student's subpoenas call for documents from a narrow time period of Student's Fall 2022 semester at Tamalpais. Following discussion with the parties on the first day of hearing, the ALJ determined that time period should be further limited to end as of the November 3, 2022 date of Joseph's psychoeducational evaluation. That narrow time

period is not overbroad. Tamalpais also contended the language of the document subpoenas was overbroad, calling for the respondents to produce “any and all documents constituting or reflecting communications” on each stated topic. Tamalpais is correct that the phrase constituting or reflecting is overbroad, and the document requests have been modified to narrowly specify the documents to be produced.

ATTORNEY CLIENT PRIVILEGE

Student’s requests for documents directed to Joseph and DeAndreis included a request to each to produce communications in Fall 2022 between them and Kentfield’s attorney in this matter, David Mishook, and Mishook’s law firm. Tamalpais at that time was a client of Mishook’s law firm, although Mishook explained at hearing that he personally was not working with Tamalpais, and had no communications with Joseph or DeAndreis. Student’s two document requests calling for the production of attorney-client communications will be quashed.

SUBPOENAS PROVIDED SUFFICIENT NOTICE TO COMPLY

California Code of Civil Procedure section 1985.3, subdivision (d), stated that service of a subpoena duces tecum must be made “in sufficient time to allow the witness reasonable time to locate and produce the records or copies thereof.” Code of Civil Procedure section 2020.410, subdivision (c) defines sufficient time as “no earlier than 20 days of the issuance, or 15 days after the service” of the subpoena, whichever is later. Under these two code sections, Student has provided Tamalpais with sufficient time to respond to the subpoena.

Student’s document subpoenas were issued and signed by Student’s attorney on August 21, 2024, and served on August 22, 2024. They called for documents to be

produced on September 10, 2024, which was 20 days after issuance, and 19 days after service. The subpoenas were timely.

ORDER

1. The subpoenas issued to Amira Mostafa, Tristan Bodle, Beth de Carion, Eunice Hong, Jen Madden, Kristi Perani, and Dave Plescia are quashed.
2. Tamalpais' motion to quash Student's subpoena for the appearance of Tracy Joseph is DENIED.
3. Tamalpais' motion to quash Student's subpoena for the production of documents by Tracy Joseph and Kendall DeAndreis is granted in part and denied in part.
4. Tracy Joseph shall produce documents responsive to the requests listed below by 10:00 AM on September 12, 2024. Joseph shall produce all responsive documents within her possession, custody or control. OAH will send Joseph's attorney Lenore Silverman a link to upload the responsive documents to the Case Center electronic evidence system.
5. Tracy Joseph will produce documents responsive to the following requests:
 - a. All written communications during the Fall 2022 term through November 3, 2022 between Joseph and Student's parents referring to student Julian Krantz.
 - b. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between Joseph and Dr. Mitch Perlman referring to student Julian Krantz.
 - c. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022

between Joseph and Dr. James Bylund referring to student Julian Krantz.

- d. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between Joseph and Sean McCormick referring to student Julian Krantz.
- e. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between Joseph and Amira Mostafa referring to student Julian Krantz.,
- f. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between Joseph and Beth de Carion referring to student Julian Krantz.
- g. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between Joseph and Catherine Teller referring to student Julian Krantz.
- h. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between Joseph and any Kentfield employee referring to student Julian Krantz.
- i. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between Joseph and any of Student's teachers at Tamalpais referring to student Julian Krantz.
- j. All notes during the Fall 2022 term through November 3, 2022 of observations of student Julian Krantz.

- k. All notes during the Fall 2022 term through November 3, 2022 of interviews regarding student Julian Krantz.
 - l. All notes during the Fall 2022 term through November 3, 2022 regarding assessments administered to student Julian Krantz.
 - m. All protocols for psychoeducational and/or academic achievement assessments used in preparing the November 3, 2022 psychoeducational evaluation of student Julian Krantz.
 - n. All written work samples from student Julian Krantz considered in preparing the November 3, 2022 psychoeducational evaluation.
 - o. All lists or summaries of student Julian Krantz's missing and/or late assignments considered in preparing the November 3, 2022 psychoeducational evaluation.
 - p. All drafts of the November 3, 2022 psychoeducational evaluation.
6. Kendall DeAndreis shall produce documents responsive to the requests listed below by 10:00 AM on September 12, 2024. DeAndreis shall produce all responsive documents within her possession, custody or control. OAH will send DeAndreis's attorney Lenore Silverman a link to upload the responsive documents to the Case Center electronic evidence system.
- a. All written communications during the Fall 2022 term through November 3, 2022 between DeAndreis and Student's parents referring to student Julian Krantz.
 - b. All written communications during the Fall 2022 term through November 3, 2022 between DeAndreis and Tracy Joseph referring to student Julian Krantz.

- c. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between DeAndreis and Amira Mostafa referring to student Julian Krantz.
- d. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between DeAndreis and any Kentfield employee referring to student Julian Krantz.
- e. All written communications (including but not limited to e-mails and text messages) during the Fall 2022 term through November 3, 2022 between DeAndreis and any of Student's other teachers at Tamalpais regarding student Julian Krantz's need for academic supports.
- f. All logs or summaries prepared by DeAndreis during the Fall 2022 term through November 3, 2022 regarding the academic supports DeAndreis provided to student Julian Krantz.
- g. All tests and/or quizzes (in any format) issued by Andreis to student Julian Krantz during the Fall 2022 term through November 3, 2022.
- h. All work samples prepared by student Julian Krantz during the Fall 2022 term through November 3, 2022.
- i. A copy of Student's course schedule for the Fall 2022 semester.

- j. All lists or summaries prepared during the Fall 2022 term through November 3, 2022 of student Julian Krantz's missing and/or late assignments, regardless of whether the assignments were accepted for credit.

IT IS SO ORDERED

A handwritten signature in black ink, appearing to read "Robert G. Martin", with a stylized flourish at the end.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings