

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

PACIFIC GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024080815

OAH CASE NUMBER 2024090560

ORDER DENYING PACIFIC GROVE UNIFIED SCHOOL
DISTRICT'S MOTIONS TO QUASH
SUBPOENAS DUCES TECUM

OCTOBER 21, 2024

On August 21, 2024, Parents on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, referred to as OAH, in case number 2024080815, Student's Case, naming Pacific Grove Unified School District, called Pacific Grove. OAH issued a Scheduling Order on August 22, 2024, and scheduled the prehearing conference for September 27, 2024, and the due process hearing for October 8 through 10, 2024.

On September 16, 2024, Pacific Grove filed a request for due process hearing in OAH case number 2024090560, Pacific Grove's Case, naming Parents on behalf of Student. The prehearing conference in Pacific Grove's Case was scheduled for September 27, 2024, and the due process hearing was scheduled for October 8 through 10, 2024.

On September 24, 2024, Pacific Grove filed a motion to consolidate Student's Case with Pacific Grove's Case. At the September 27, 2024, prehearing conference, OAH granted the motion to consolidate and the parties' request for continuance and continued the hearing on the consolidated cases to November 13 through 14, 2024.

On September 13, 2024, Student issued subpoenas duces tecum to produce documents to Lauren Davis, Megan Roach, Yolanda Cork-Anthony, Jennifer Lauchaire, and Amy Tulley. Student's subpoenas sought records to be produced on October 8, 2024. On September 24, 2024, Pacific Grove filed motions to quash the subpoenas duces tecum. Student did not oppose Pacific Grove's motions to quash.

Pacific Grove seeks to quash the subpoenas on the grounds:

1. the subpoenas are overbroad in scope;
2. the subpoenas failed to establish reasonable necessity for the records; and
3. the subpoenas failed to identify the requested records with specificity.

A party to a due process hearing under the Individuals with Disabilities Education Act, called 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, “[t]he hearing officer shall have the right to issue subpoenas (order to appear and give testimony) and subpoenas duces tecum (order to produce documents or papers 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, 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.

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. (20 U.S.C. § 1400 et seq.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at “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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

Education Code, section 56505, subdivision (a), provides that “[t]he state hearing shall be conducted in accordance with regulations adopted by the board,” and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (Cal. Code Regs., 6 tit. 5, § 3089 [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

Pacific Grove’s motions to quash Student’s subpoenas duces tecum are denied as moot, because the hearing in the consolidated cases begins on November 13, 2024, and Student has no right to prehearing discovery. Therefore, Student must reissue the

subpoenas duces tecum. Any reissued subpoenas shall comply with all requirements regarding the service and content of subpoena duces tecum in a special education proceeding. This Order is without prejudice to Pacific Grove's right to re-file motions to quash any subsequently issued subpoenas duces tecum.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings