

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

HESPERIA UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2026040359

OAH CASE NUMBER 2026031219

ORDER GRANTING HESPERIA'S MOTION TO QUASH 17
SUBPOENAS DUCES TECUM

SEPTEMBER 8, 2026

On March 25, 2026, Hesperia Unified School District filed with the Office of Administrative Hearings, called OAH, a request for due process hearing, called a complaint, in OAH case number 2026031219, called Hesperia's Case, naming Student.

On April 6, 2026, Student filed a complaint in OAH case number 2026040359, called Student's Case, naming Hesperia. On April 9, 2026, OAH consolidated Hesperia's Case with Student's Case. On May 15, 2026, OAH granted Student's motion to amend the complaint. On June 9, 2026, OAH granted the parties' request to continue and set the due process hearing to begin on September 9, 2026.

On August 16, 19, and 20, 2026, Student issued 17 subpoenas duces tecum on Vanessa Saldivar, Sybil Bell, Shayla Savchenko, Shannon Garibay, Sarah Whitten, Rebecca Galvez, Nancy Smart, Michael Brooksby, Luis Cruz, Jeff Hunt, Gema Orozco-Ruiz, First Student Incorporated, Eric Land, Diana Sheahan, Darleen Paiz, Anja Easter, and Christina Tompkins. Student sought all communications, assessment reports, notes, and IEP team meeting recordings regarding Student for all 17 subpoenas duces tecum. Student did not include a valid production date for any of the subpoenas duces tecum or a valid proof of service.

On August 24 and 26, 2026, Hesperia filed a motion to quash each subpoena duces tecum on the grounds that the subpoenas duces tecum do not contain a production date, were improperly served, and seek documents protected by attorney-client privilege. Additionally, Hesperia seeks to quash some of the subpoenas duces tecum because they do not establish reasonable necessity for the records and are overly broad and unduly burdensome.

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 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 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 (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

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. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Pre-hearing discovery in special education cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505, subd. (e)(7).)

All 17 subpoenas duces tecum are defective on their face. None of them contain a valid production date. Some of them do not have a production date at all and those that do direct the respondent to deliver documents by a date in 2024 or 2025. Student has no statutory right to pre-hearing discovery. Student’s subpoenas duces tecum should have been returnable on the first day of hearing, September 9, 2026. Section 1987.1 of the Code of Civil Procedure, provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it. While it

would be possible to modify the production date to September 9, 2026, the subpoenas duces tecum were also improperly served, therefore, it is not appropriate to modify them but to quash them entirely.

Student did not fill out the proof of service included with OAH's form subpoena duces tecum. Student included one document as a proof of service for all 17 subpoenas duces tecum that appears to be a request for personal service of Vanessa Saldivar. First, Student spelled Saldivar's name incorrectly on the request for personal service, Student transposed the "i" and "v" in Saldivar's name. Second, the document is a personal service request, not a confirmation that the subpoenas duces tecum were served. Student did not include anything confirming the subpoenas duces tecum were actually served. Finally, the personal service request was for Vanessa Saldivar, who is likely Vanessa Saldivar. Saldivar is a board certified behavior analyst with Hesperia. Student did not include a statement that Saldivar was authorized to accept service on behalf of other Hesperia employees or a contracted transportation company. Because Student's service of the subpoenas duces tecum was defective they are quashed in their entirety.

Additionally, because the subpoenas duces tecum are defective on their face it is not necessary to address whether they seek documents protected by attorney-client privilege, fail to establish reasonable necessity for the records, or are overly broad and unduly burdensome.

ORDER

Hesperia's motion to quash Student's subpoenas duces tecum to Vanessa Saldivar, Sybil Bell, Shayla Savchenko, Shannon Garibay, Sarah Whitten, Rebecca Galvez, Nancy Smart, Michael Brooksby, Luis Cruz, Jeff Hunt, Gema Orozco-Ruiz, First Student Incorporated, Eric Land, Diana Sheahan, Darleen Paiz, Anja Easter, and Christina Tompkins is granted.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings