

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

IRVINE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2026041147

OAH CASE NUMBER 2026080762

ORDER DENYING MOTION TO QUASH OR MODIFY
SUBPOENAS DUCES TECUM TO STUDENT'S EXPERTS

SEPTEMBER 10, 2026

On April 24, 2026, Student filed with the Office of Administrative Hearings, OAH, a request for due process naming Irvine Unified School District. Student's issues allege Irvine denied him a free appropriate public education, FAPE, during the 2025-2026 regular and extended school year. Student's issues include challenges to Irvine's assessments and failures to assess, failure to offer appropriate goals, and failure to offer appropriate physical therapy, occupational therapy, orientation and mobility services and a one-to-one aide.

On August 19, 2026, Irvine filed a request for due process hearing naming Student. Irvine filed to defend its May 26, 2026, individualized education program as amended.

On August 24, 2026, OAH consolidated these matters and they are currently set for hearing beginning September 29, 2026. On August 24, 2026, OAH also granted Student's motion to compel Irvine to allow Student's three experts, Dr. Sonja Biggs, an orientation and mobility specialist, Occupational Therapist Gwen Olicker, and Physical Therapist Pamela Taylor to observe Student in class.

On September 1, 2026, Student filed a motion to quash Irvine's subpoenas duces tecum to Student's three identified experts. These subpoenas were issued on August 26, 2026, and copies were sent to Student's attorney along with a Notice to Consumer on that date. The subpoenas were served on each of the three witnesses on August 31, 2026, and called for a production date of September 15, 2026, the first day of hearing at that time.

On September 4, 2026, OAH held a prehearing conference, called PHC, in this matter and continued the hearing to September 29, 2026. At the PHC the administrative law judge, ALJ, changed the production date for each subpoena to the continued hearing date of September 29, 2026, pending ruling on the motion to quash.

Irvine's subpoenas directed Biggs, Olicker, and Taylor to produce the following records from July 22, 2025, through the present, as related to their specific areas of expertise and anticipated testimony:

- All records generated, prepared, or maintained by the witness concerning any evaluation, assessment, interview, consultation, or observation of

Student, including any protocols, data, notes, intake documents, and summaries, as follows,

- Biggs - relating to Student's visual functioning, orientation and mobility, access to the educational environment, or related educational needs;
- Olicker - relating to Student's fine motor and visual-motor skills, sensory processing or regulation, motor planning or coordination, self-care or school-related activities of daily living, access to classroom tasks and materials, and functional participation in the educational environment;
- Taylor - relating to Student's physical therapy-related educational needs or functioning, including, as applicable, gross motor skills, mobility, balance, motor coordination, strength or endurance, positioning or transfers, access to the school environment, functional participation in educational activities, and adaptive or mobility-related supports or equipment;
- All records reviewed, considered, or relied upon by the witness in forming any opinion or recommendation concerning,
 - Biggs - Student's visual functioning, orientation and mobility needs, access to the educational environment, progress, related goals, services, supports, placement, or need for one-to-one assistance, and upon which her testimony will rely;
 - Olicker - Student's occupational therapy-related needs or functioning; progress; fine motor or visual-motor skills; sensory processing or regulation; motor planning or coordination; self-care or school-related activities of daily living; access to classroom tasks

and materials; functional participation in the educational environment; assessments, goals, services, or supports; placement; or need for one-to-one assistance, and upon which her testimony will rely;

- Taylor - concerning Student's physical therapy-related needs or functioning; progress; gross motor skills; mobility; balance; motor coordination; strength or endurance; positioning or transfers; access to the school environment; functional participation in educational activities; adaptive or mobility-related supports or equipment; related assessments, goals, services, or supports; placement; or need for one-to-one assistance, and upon which her testimony will rely;
- All records generated, prepared, or maintained in connection with the witness' observation of Student in preparation for her anticipated testimony, including observation notes, data, summaries, recordings, and other materials documenting or reflecting the observation or any opinions or recommendations arising from;
- All nonprivileged communications with Parents concerning
 - Biggs - Student's visual functioning, orientation and mobility needs, educational access, progress, related services or supports, placement, one-to-one assistance, observation, evaluation, or the witness' opinions or recommendations concerning those matters;
 - Olicker - concerning Student's occupational therapy-related needs or functioning, educational access, progress, assessments, goals, services or supports, placement, one-to-one assistance,

observation, evaluation, or Ms. Olicker's opinions or recommendations concerning those matters;

- Taylor - concerning Student's physical therapy-related needs or functioning, educational access, progress, assessments, related goals, services or supports, placement, one-to-one assistance, observation, evaluation, or Ms. Taylor's opinions or recommendations concerning those matters; and
- All nonprivileged communications with Student's attorney regarding
 - Biggs - Student's visual functioning, orientation and mobility, educational access, related services or supports, placement, or one-to-one assistance, and the witness' observations and opinions regarding the same;
 - Olicker - Student's occupational therapy-related needs or functioning, educational access, progress, assessments, goals, services, supports, placement, or one-to-one assistance, and Ms. Olicker's observations and opinions regarding the same;
 - Taylor - regarding Student's physical therapy-related needs or functioning, educational access, progress, assessments, related goals, services, supports, placement, or one-to-one assistance, and Ms. Taylor's observations regarding the same.

Irvine asserts such records are reasonably necessary for it to determine the nature and extent of the expert witness' involvement with Student, the information and observations considered including any assessment data, and to evaluate the factual basis for the expert's opinions and recommendations.

Student moves to quash each subpoena on the grounds Irvine failed to prove it served the witnesses and that the subpoenas do not allow at least a 15-day period to locate and produce the requested records. On September 4, 2026, Irvine filed its proof of service of the subpoenas to each witness, establishing it served the witnesses by certified mail and by email on August 31, 2026. Further, the ALJ changed the date of production to September 29, 2026. Accordingly, the ALJ declines to quash the subpoenas on these grounds.

Student also moved to quash the subpoenas on the grounds they seek protected attorney work product, and that Irvine failed to establish reasonable necessity for the records. Student asserts the subpoenas are overbroad and not tied to anticipated expert opinion. Student proposes, at a minimum, that OAH limit any production to records concerning the specific assessments, evaluations, or observations underlying the opinions the named expert is expected to offer at hearing.

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).)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions OAH sometimes 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.

The “reasonable necessity” standard required by Title 5 of the California Code of Regulations, Section 3082, subd. (c)(2), is a distinct, more stringent standard than the “good cause” standard articulated in the 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.)

REASONABLE NECESSITY FOR THE REQUESTED RECORDS

The Code of Civil Procedure does not, by its terms, apply to special education due process hearings. It is true that OAH sometimes looks to analogous provisions of that Code when special education law does not specifically address a subject. OAH does not, however, rely on analogies to the Code of Civil Procedure when the question at issue has a specific answer in special education law. One such specific answer concerns the

standard for issuance of subpoenas duces tecum. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

The history of the reasonable necessity standard shows it was intended to be more demanding than the more general rules of civil discovery. The good cause requirement of subdivision (b) of section 1985 of the Code of Civil Procedure has been incorporated into the Administrative Procedure Act. (Gov. Code, § 11450.20, subd. (a).). Rather than accept that standard, the State Board of Education, in adopting the reasonable necessity standard, expressly exempted special education due process proceedings from section 11450.20 of the Government Code, (5 Cal. Code Regs., tit 5, § 3089) and used the phrase reasonable necessity instead. (*Id.*, § 3082, sub. (c)(2).) That choice would be meaningless if reasonable necessity meant the same thing as good cause.

Here, Student intends to elicit expert opinion testimony from Biggs, Olicker, and Taylor regarding Student's needs in support of his contention that Irvine denied him a FAPE during the 2025-2026 regular and extended school year. His experts are slated to observe Student in class, and some may be conducting private assessments of Student. Irvine's subpoenas are reasonably tailored to obtain those records produced and relied upon by each expert with regard to their anticipated testimony. The subpoenas cover the time frame from the first day of the 2025-2026 school year through the time period of the experts' observations and possible evaluations of Student. The scope of the subpoenas is not overbroad.

Further, Irvine has established the requested records are reasonably necessary for it to present its case and examine the factual basis for each expert's opinion in their specific area of expertise. Student's arguments to the contrary are not persuasive. The ALJ declines to modify the subpoenas as requested by Student.

THE REQUESTED RECORDS ARE NOT PROTECTED WORK-PRODUCT

California Code of Civil Procedure section 2018.030, subdivision (a), states that a writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances. However, subdivision (b) of that section starts that the work-product of an attorney, other than a writing described in subdivision (a), is discoverable if the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

The records requested by Student are not protected attorney work-product. Once it is reasonably certain a designated expert will testify, the materials underlying that expert's opinion lose work-product protection and become discoverable. (*Williamson v. Superior Court* (1978) 21 Cal.3d 829, 834; *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 916, quoting *Swartzman v. Superior Court* (1964) 231 Cal.App.2d 195, 203 [once it is reasonably certain that a witness will give a professional opinion on a material matter in dispute, the work-product protection otherwise available for that witness's consultation with counsel terminates].) Once a party identifies a witness as an expert, that decision "manifests the client's consent to disclosure" of related attorney-client communications, and disclosure of related work-product to that witness waives work-product protection as well. (*DeLuca v. State Fish Co., Inc.* (2013) 217 Cal.App.4th 671, 689, 692.)

Student has designated Biggs, Olicker, and Taylor as expert witnesses. Accordingly, the requested records are not protected attorney work-product. The ALJ declines to quash the subpoenas on this ground.

ORDER

1. Student's motion to quash Irvine's subpoenas duces tecum to Biggs, Olicker, and Taylor is DENIED.
2. Student's motion to modify Irvine's subpoenas duces tecum to Biggs, Olicker, and Taylor is DENIED.

Theresa Ravandi

Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings