

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 GRANTING MOTION TO QUASH SUBPOENA
DUCES TECUM TO IRVINE'S CUSTODIAN OF RECORDS

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, predetermination, failing to consider a continuum of service options, implementation failures, failing to make a clear offer, and failure to offer appropriate goals and 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 September 1, 2026, Irvine filed a motion to quash Student's subpoena duces tecum to its custodian of records. This subpoena was issued on August 28, 2026, and directed Irvine to produce responsive records on 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.

Student's subpoena directed Irvine to produce the following "communications," defined as "emails, letters, text messages, or communications through platforms such as Google Chat," from February 5, 2025, through the present, namely,

- All communications between Irvine's counsel and any employee of Irvine, identified as an expert witness in Irvine's PHC statement, including any facts, data, materials, or information counsel furnished to or discussed with said expert that said expert considered in forming any opinion concerning Student and any communications concerning the substance, basis, or development of the expert's anticipated opinion or testimony;
- All communications created, maintained, sent, or received by any employee, agent, or representative of Irvine relating to Student, including

communications concerning the predetermination of any supports, services, or placement offered to Student.

Student asserts such communications are reasonably necessary because Irvine has represented that it may call one or more of its employees to testify as an expert witness. Student asserts Irvine's experts' communications with its counsel concerning the subject matter of the experts' anticipated testimony are not protected by the attorney-client privilege or work-product doctrine, and Student is not seeking privileged or protected communications. Student also defends his request as reasonably necessary in light of his predetermination claims. Student asserts internal Irvine communications are the only source of evidence that can establish predetermination. Student contends Irvine failed to produce these requested communications pursuant to his educational records request.

Irvine moved to quash the subpoena on the grounds that it is vague, overbroad, and seeks non-existent and privileged communications. Irvine argues it has not identified any expert witness so there are no responsive communications to the first category of requested records. Further, the subpoena identifies no specific custodian, no individual sender or recipient and provides no search terms, leaving Irvine to identify an unknown number of potentially responsive employees, search multiple communication platforms over the course of 18 months and individually review potentially thousands of communications for responsiveness.

On September 3, 2026, Student filed an opposition to Irvine's motion to quash. Student argues Irvine's PHC statement notes that nearly all of its listed witnesses will testify regarding their qualifications and experience and that means they will be providing expert opinion testimony. Student further notes that Irvine's PHC statement reserves its right to designate its staff as expert witnesses. Student argues Irvine must be

held to the same standard as Student, and since it has indicated numerous employees will testify as to their qualifications, they will presumably be providing opinion testimony. Therefore, their communications with counsel concerning the subject matter of their anticipated opinion testimony is discoverable.

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.)

STUDENT FAILED TO ESTABLISH REASONABLE NECESSITY FOR OR PROVIDE SUFFICIENT SPECIFICITY AS TO 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.

As to the requested communications with Irvine's experts, Student explained in his addendum to the subpoena why such communications were discoverable and not privileged attorney-client communications or protected work-product. However, Student was required to establish reasonable necessity for these communications. Student failed to do so. Student did not make any specific factual showing as to why such communications were reasonably necessary for Student to present his case. Rather, Student simply asserts an entitlement to attorney communications concerning the witnesses' anticipated testimony with any and all of the 30 plus unidentified Irvine staff members who may provide unknown opinions about unspecified topics. Student failed to meet the requisite showing that such attorney communications were reasonably necessary.

Student also failed to show reasonable necessity for the breadth of communications requested in the second category. This category required production of all communications created, maintained, sent, or received by any Irvine employee, agent, or representative that related to Student over a 19-month period. The subpoena fails to identify specific communications or categories of communications, or specific individuals who created, sent, received, or maintained the unspecific communications. The subpoena fails to identify with any specificity what communications are sought, from which individuals, or for what purpose. Student makes no showing why these

communications are reasonably necessary. The ALJ quashes the subpoena on the additional grounds it is vague and overbroad.

Student further expands the requested communications to include those concerning the predetermination of any supports, services or placement offered to Student. Rather than providing specificity, this adds an additional level of vagueness. Predetermination is a legal construct not a category of communications. Student has failed to provide the required specificity to enable Irvine to identify the communications sought. Student's argument that Irvine's internal communications are the only source of evidence to establish predetermination is not persuasive. Student's subpoena duces tecum to Irvine is quashed on the grounds it fails to establish reasonably necessity, is vague, and overbroad.

ORDER

Irvine's motion to quash Student's August 28, 2026, subpoena duces tecum to its custodian of records is GRANTED. Student's August 28, 2026, subpoena duces tecum to Irvine is hereby quashed.

Theresa Ravandi

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Administrative Law Judge

Office of Administrative Hearings