

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 IN PART MOTION TO QUASH
SUBPOENA DUCES TECUM FOR MARTA SHINN

SEPTEMBER 10, 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 19, 2026, Hesperia issued a subpoena duces tecum for Dr. Marta Shinn of Variations Psychology. A notice to consumer was sent to Student advising Student of the subpoena. The subpoena duces tecum to Shinn sought assessment reports, assessment protocols, special education records, progress reports and informal assessments, interview notes, observation notes and data, correspondence with Parents and Student's attorney, registration and intake forms, billing records, and service logs.

The subpoena duces tecum ordered Shinn to produce the requested documents on September 9, 2026. Hesperia included an affidavit by Hesperia's attorney with each subpoena duces tecum that described the records sought and why the records sought are relevant and material. Hesperia's attorney also asserted there is a reasonable necessity for the documents and things described in the subpoena duces tecum.

On August 19, 2026, and again on August 20, 2026, Student filed a motion to modify the subpoenas duces tecum on the grounds that documents requested include attorney-work product under California Code Civil Procedure § 2018.030, are irrelevant to the matter, or are already in Hesperia's possession. On August 24, 2026, Hesperia filed a document titled Hesperia's motion to quash subpoenas duces tecum which was actually an opposition to Student's motion to quash which argues Hesperia reasonably needs the documents to present a defense to Student's claims.

The crux of both Hesperia's case and Student's case is the appropriateness of Hesperia's assessments and request to exit Student from Special education. Student alleges that her outside expert opines she still requires special education services, and found errors in Hesperia's assessment report. Although Student does not specifically name the outside expert, Student listed Shinn as an expert witnesses.

A party to a due process hearing under the Individuals with Disabilities 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, the hearing officer shall have the right to issue a subpoena, which is an order to appear and give testimony, and a subpoena duces tecum which is an 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.

RECORDS PROTECTED BY THE ATTORNEY WORK PRODUCT DOCTRINE

Student contends the subpoenas duces tecum seeks records that may include the impressions, conclusions, opinions, or legal research or theories of Student's attorneys, which are protected by the attorney work product doctrine, and are therefore, not discoverable. Hesperia argues Student failed to explain how her attorney's impressions, conclusions, opinions, or legal research would appear in communications with Shinn or billing information.

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 states 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 injustice. The attorney work product rule in California creates a qualified privilege against discovery of general work product and an absolute privilege against disclosure of writings containing the attorney's impressions, conclusions, opinions or legal theories. (*BP Alaska Exploration, Inc. v. Superior Court* (1988) 199 Cal.App.3d 1240, 1250.)

Student's motions to quash is granted in part to the extent the subpoena duces tecum seeks production of writings containing the impressions, conclusions, opinions, or legal research or theories of Student's attorneys. Such records are barred from discovery under any circumstances. (Code of Civ. Proc., § 2018.020, subd. (a).)

Accordingly, Student's motions to quash the subpoena duces tecum for Shinn is granted in part and the requests for records containing the impressions, conclusions, opinions, or legal research or theories of Student's attorneys are quashed.

SCOPE OF THE SUBPOENA

Student contends the requests for individualized education programs, or IEPs, and assessment reports Hesperia authored is unnecessarily burdensome as Hesperia already has the documents in its possession. In its opposition, Hesperia contends it is not unreasonably burdensome for Shinn to produce the documents and they are necessary to ensure that the IEPs and assessment reports that Shinn relied upon are the same that the district owns, and that there are no differences between the sets of documents.

Hesperia's requests for documents Hesperia authored is unnecessary. Shinn is scheduled as a witness in the hearing and can more accurately testify to the documents Shinn relied upon. Accordingly, Student's motions to modify the subpoena duces tecum as to documents Hesperia authored is granted.

ORDER

1. Student's motion to modify Hesperia's subpoena duces tecum for Dr. Shinn is granted in part and the subpoena is hereby modified. Dr. Shinn shall produce documents as described in the subpoenas duces tecum except for documents that contain the impressions, conclusions, opinions, or legal research or theories of Student's attorneys and any documents Hesperia authored. Dr. Shinn shall not produce any records containing the impressions, conclusions, opinions, or legal research or theories of Student's attorneys.

2. The production date remains the same, September 9, 2026, or as soon as Dr. Shinn receives this Order, she shall comply with the subpoena duces tecum and upload the subpoenaed records following the instructions on the subpoena duces tecum
3. Counsel for Hesperia shall immediately serve a copy of this Order on Dr. Shinn.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings