

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
ASSURANCE LEARNING ACADEMY,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2026070591

ORDER DENYING IN PART AND GRANTING IN PART
STUDENT'S MOTION TO COMPEL PRODUCTION OF
RECORDS

SEPTEMBER 16, 2026

On July 10, 2026, Assurance Learning Academy, called Assurance, filed a request for due process with the Office of Administrative Hearings, called OAH naming Student. On July 22, 2026, an order granting a continuance and setting a mediation was granted scheduling the case for hearing on October 27, through October 29, 2026.

On September 1, 2026, Student filed a Motion for an Order Requiring the Production of Outstanding Records. Assurance did not file a response.

Specifically, Student is requesting the following records:

- Complete cumulative and special-education files for January 2026 to the present, together with earlier records actually relied upon for the March 20, 2026, assessment plan, March 31, 2026, individualized education program, called IEP, May 28, 2026, prior written notice, called, PWN, or July 10, 2026, complaint;
- Attendance source data and methodology, appointment calendars and notices, sign-in records, independent-study learning or participation logs, edit and correction history, and documents explaining what each attendance or engagement measure represents;
- Course and work-completion source data, work samples relied upon, assignment and credit-entry histories, progress reports, curriculum-based measures, and records supporting alleged lack of progress or insufficient credits;
- Specialized academic instruction and other service logs; provider logs; consultation records; missed-service records; provider identities, roles, and qualifications; and documents reflecting delivery or attempted delivery of services;
- Observations relied upon, including date, observer, role, notes, and any resulting report; assessment protocols, records-review notes, rating scales, and prior assessments actually relied upon;
- March 31, 2026, IEP source data, present-level data, goal baselines, notes, notices, participation records, and documents supporting proposed counseling or psychological services;

- Nonprivileged communications and notices relevant to alleged availability, scheduling, consent, participation, attendance, implementation, or noncooperation;
- Records supporting the characterization of anxiety and the proposed specific learning disability, other health impaired, or emotional disability inquiry, including information distinguishing disability-related needs from environmental, transportation, displacement, or implementation barriers; and
- A list of the types and locations of responsive records, and an itemized statement for any requested category Petitioner contends does not exist, is not maintained, was already produced, or is withheld on a lawful basis.

Student contends that she made a records request on March 27, 2026, prior to the March 31, 2026, IEP team meeting and that records were not produced. Student further explained that she made subsequent requests both orally and in writing through Assurance's online records request process in April, May, June, and July 2026. Student contends that when records were reviewed in July 2026, the records were not complete and therefore she sent a new written request for complete records in August 2026. Student contends that it has only seen Student's transcript, Progress by Learning Period report, test scores, and material associated with the March 20, 2026, assessment plan/signature page. Student believes that the records did not include Student's complete February 2024, IEP and associated records, a complete digital PDF copy of the March 31, 2026, IEP following the meeting, or the requested underlying records concerning the March 2026 prior written notice, assessment proposal, and IEP process.

Student has acknowledged that Assurance has produced some of the records but has indicated that she believes the records are incomplete. Student is seeking confirmation that the records exist and that for any record that Assurance relied upon but does not produce, to state a reason why it is unavailable or withheld. Student correctly cited California Education Code section 56504 requiring copies of school records within five business days after an oral or written request to comply. Student is seeking an order compelling Assurance to confirm that it has produced all records requested. However, Student does not provide any legal authority requiring Assurance offer such confirmation.

APPLICABLE LAW

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (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.

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).) 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).)

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 as in other administrative hearings. (Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].) Thus, while subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework which govern these proceedings – meaning that in due process cases, subpoenas can only be used to compel the production of a witness or documents at the hearing itself.

Notwithstanding the prohibition of prehearing discovery, Parents or adult students are entitled to request copies of a student’s educational records maintained by the school district at any time. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District* (9th Cir. 2018) 739 Fed. Appx. 870, 873 (*Burnett*); Parents of currently enrolled or former pupils have an absolute right to access to any and all pupil records related to their children that are maintained by school districts or private schools. The withholding of any of those records is prohibited. (Ed. Code, § 49069.7.)

Under title 20 United States Code section 1232h(a), a school district must also make available for parent’s inspection “[a]ll instructional materials, including teacher's manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program.” The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at

hearing five business days prior to the date of the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).)

A public agency is required to comply with a request for pupil records without unnecessary delay before any IEP team meeting or any hearing and in no case more than five business days after the request is made orally or in writing. (Ed. Code, § 56504.) If a school record includes information on more than one pupil, the parents of those pupils have the right to inspect and review only the information relating to their child or to be informed of that specific information. (*Ibid.*) A public agency shall provide a parent, on request of the parent, a list of the types and locations of school records collected, maintained, or used by the agency. (*Ibid.*)

However, not all school records are education records or pupil records. Education records under the IDEA, sometimes called pupil records, are defined by the federal Family Educational Rights and Privacy Act, also called FERPA, to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); see also Ed. Code, § 49061, subd. (b) [defining pupil records]; 34 C.F.R. § 99.3 [defining education records]; see also *Newport-Mesa Unified School District v. State of California Department of Education* (C.D.Cal. 2005) 371 F.Supp.2d 1170, 1175, 1179, fn. 5 [testing protocols are school records under Education Code section 56504, which include scores sheets on which students mark their answers and tables on which examiners calculate student's scores, and can include prompts of the test questions and instructions for test administrators]; *Letter to Price*, Office of Special Education Programs (October 13, 2010)[a test protocol that contains personally identifiable information is an education record]; *Letter to Shuster*, Office of Special Education Programs (August 7,

2007)[records that are not directly related to a student and maintained by agency are not education records].)

The United States Supreme Court in *Owasso Ind. School District v. Falvo* (2002) 534 U.S. 426 (*Falvo*) after conducting an analysis of FERPA provisions related to education records, determined that not every record relating to a student satisfies the FERPA definition of "education records." Specifically, the Supreme Court examined the FERPA provision that requires educational institutions to "maintain a record, kept with the education records of each student" that "list[s] those who have requested access to a student's education records and their reasons for doing so." (*Falvo, supra*, 534 U.S. at p. 434.) The Court concluded that because this single record must be kept with the education records, "Congress contemplated that education records would be kept in one place with a single record of access." (*Id.*) The Court further concluded that "[b]y describing a 'school official' and 'his assistants' as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar..." (*Id.* at pp. 434-435.)

In *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, when determining whether an investigative report was an education record, citing *Falvo*, the Court of Appeal stated that "the statute was directed at institutional records maintained in the normal course of business by a single, central custodian of the school. Typical of such records would be registration forms, class schedules, grade transcripts, discipline reports, and the like." (*Id.* at p. 754.) The Court of Appeal found that the investigative report, "which was not directly related to the private educational interests of the student," was not an education record, because "the report was not something regularly done in the normal course of business," and "was not the type of report regularly

maintained in a central location along with education records...in separate files for each student." (*Id.* at p. 755.)

In *S.A. ex rel. L.A. v. Tulare County Office of Education* (E.D.Cal. Sept. 24, 2009, No. CV F 08-1215 LJO GSA) 2009 WL 3126322, *aff'd.* *S.A. v. Tulare County Office of Education* (E.D.Cal. October 6, 2009, No. CV F 08-1215 LJO GSA.) 2009 WL 3296653, the district court found that documents such as school district emails concerning or personally identifying a student that had not been placed in his permanent file were not educational records as defined under FERPA. Citing *Falvo*, the court stated Congress contemplated that educational records would be kept in one place with a single record of access to those records. Because the emails student requested had not been placed in his permanent file and were therefore not "maintained" by the school district, the emails were not educational records, and the school district was therefore not required to produce them under a request for student records under the IDEA. (2009 WL 3126322, at p. 7.)

In *Burnett*, parents argued that the school district committed a procedural violation when it only turned over emails concerning the student that had been printed and added to the student's file. The Ninth Circuit Court of Appeals affirmed the district court's determination that the school district was not required to turn over emails that were not "maintained" in a physical folder or secure electronic database. (739 Fed. Appx. at p 873.) "The Supreme Court has interpreted the word 'maintained' in FERPA as 'to keep in existence or continuance; preserve; retain' and reasoned that '[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database.'" (*Ibid.*, quoting *Falvo*, 534 U.S. 426 at pp. 432-433.)

Special education law does not specifically address motions to quash subpoenas duces tecum or motions to compel production of documents. In ruling on such motions, OAH relies by analogy on the relevant portions of the Code of Civil Procedure. Moreover, an ALJ may take action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to issue orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case.

DISCUSSION

It appears that some of the documents sought by Student fall within the category of "education records" and some of the documents requested have not been established to be "education records" as that term is defined by the law, as discussed above. Not every record relating to a student satisfies the FERPA definition of "education records." Student failed to establish that all the requested documents are records which were or should have been maintained in Student's educational record. To the extent Student seeks records which are not education records as that term is defined by law, Student's request for production of documents is denied. Prehearing discovery is not allowed in special education cases and to the extent Student seeks documents which do not fall within the definition of education records, Student is not entitled to these documents prior to hearing through a prehearing motion to compel. For example, Student has made no showing that all documentation regarding behavior information, observations notes or work samples that are sought are education records. Student is not entitled to any of the requested documents which are not part of Student's education record at this juncture.

However, many of the documents sought by Student may be education records. Education records can be requested at any time pursuant to Education Code section

56504. To the extent Student sought Student's education records as that term is defined by existing law, Student was permitted to make this request orally or in writing and Assurance was required to produce them within five business days of the request.

Based on the information provided thus far, the ALJ is unable to conclude that there are any education records which have not now been produced by Assurance. Assurance has not responded to the motion.

To the extent that Assurance has not yet produced a complete copy of Student's education records, Assurance is ordered to produce those records it has not already produced to Student, if any, within five business days of the date of this order. The ALJ finds that requiring Assurance to produce all education records prior to hearing will promote due process and the orderly conduct of the hearing and that such production was required without any unnecessary delay before any IEP team meeting, and in no case more than five business days after the request was made. (Ed. Code, § 56504.)

Accordingly, except for the records Assurance already produced to Student in July 2026 and thereafter, Assurance is required to produce to Student by no later than September 23, 2026, all education records as defined in Title 20 United States Code section 1232(g) and Education Code section 49061 and the applicable regulations and case law interpreting those statutes and regulations. This production shall include but is not limited to records, files, documents, and other materials containing information directly related to Student including class schedules, grade transcripts, discipline reports, and the like, which are maintained by Assurance in Student's educational record. Items that would not be considered educational records are items such as copies of service logs, sign-in records, appointment calendars provider identities, roles and qualifications are not educational records if they are not directly related to Student.

Nothing in this order is intended to limit Student's right to subpoena documents for the hearing upon a showing of reasonable necessity. Nor is anything in this order intended as a determination of Student's potential claim that Assurance denied Student a FAPE by failing to timely produce Student's education records. All other relief sought by Student is denied.

ORDER

1. Student's motion to compel production of records is granted in part and denied in part.
2. Assurance is ordered to produce those education records it has not already produced to Student, if any, within five business days of the date of this order.
3. Student's motion to confirm the existence of records that may or may not be maintained is denied.

IT IS SO ORDERED.



Jessica Plitt

Administrative Law Judge

Office of Administrative Hearings