

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026041147

OAH CASE NUMBER 2026080762

ORDER GRANTING MOTION TO QUASH STUDENT'S
SEPTEMBER 11, 2026, SUBPOENA DUCES TECUM

SEPTEMBER 22, 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 seek permission to implement the May 26, 2026, individualized education program as amended, without parental consent. On August 24, 2026, OAH consolidated these matters and they are currently set for hearing beginning September 29, 2026.

On September 16, 2026, Irvine filed a motion to quash Student's subpoena duces tecum to its custodian of records. This subpoena was issued on September 11, 2026, and directed Irvine to produce responsive records on September 29, 2026, the first day of hearing at that time.

Student's subpoena directed Irvine to produce the following "communications," a term which is not defined in the subpoena, between a list of several identified individuals who Student asserts are Irvine staff members, and Irvine's legal counsel, from July 22, 2025, through the present, namely,

- Any and all nonprivileged communications between any District Witness and the District's counsel concerning that witness's anticipated testimony, opinions, or qualifications, excluding communications protected by the attorney-client privilege or attorney work-product doctrine, but including any communications reflecting facts, data, or opinions the witness has been asked to consider or has considered.

Irvine argued that this subpoena should be quashed because it substantively mirrors Student's previously filed and quashed subpoenas, is unduly burdensome, seeks impermissible discovery, and fails to include a showing of reasonable necessity for the records.

Student did not file a written opposition to Irvine's motion. However, opposed Irvine's motion at the September 21, 2026, prehearing conference. Student argued that the requested information was necessary to prepare a defense to Irvine's issue, including regarding the testimony of Irvine's staff who may be called as expert witnesses. As explained below, Irvine's motion to quash is granted.

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).) 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.)

STUDENT FAILED TO ESTABLISH REASONABLE NECESSITY FOR THE RECORDS REQUESTED

The Code of Civil Procedure does not, by its terms, apply to special education due process hearings. 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 example 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 between Irvine's counsel and Irvine's witnesses, Student explained in his addendum to the subpoena why such

communications were discoverable and does not seek communications protected by attorney-client communications or protected work-product privilege. But, Student did not adequately explain how the communications sought were not privileged attorney-client communications or protected work-product.

Additionally, Student's previous subpoena duces tecum, issued on August 13, 2026, as modified by OAH's August 24, 2026, Order following the August 24, 2026, prehearing conference, sought substantively identical, communications related to Student, including those pertaining to the development of Student's individualized education program, called an IEP, assessments, and recommendations for services and placement.

Student did not establish that the records sought by the September 11, 2026, subpoena were substantively different than those sought by the August 13, 2026, subpoena, such that the September 11, 2026, subpoena is not duplicative of the August 13, 2026, subpoena. To the extent that the requests do not overlap, Student's assertions regarding the reasonable necessity of the additional records sought are not convincing.

Student's additional arguments regarding the character of the testimony of Irvine's witnesses were addressed by OAH's September 10, 2026, Order Denying Student's Motion in Limine, and need not be addressed again here.

For the forgoing reasons, Student did not establish reasonable necessity for the records sought in the September 11, 2026, subpoena. Student's September 11, 2026, subpoena is therefore quashed.

ORDER

1. Irvine's motion to quash Student's September 11, 2026, subpoena duces tecum to its custodian of records is granted.
2. Student's September 11, 2026, subpoena duces tecum to Irvine is hereby quashed.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi

Administrative Law Judge

Office of Administrative Hearings