BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

SAN BENITO HIGH SCHOOL DISTRICT .

OAH CASE NUMBER 2021030859

ORDER GRANTING MOTION TO QUASH SUBPOENA

JUNE 8, 2021

On March 24, 2021, Student filed a request for due process with the Office of Administrative Hearing naming San Benito High School District. Office of Administrative Hearing is called OAH. San Benito High School District is called San Benito. The May 10, 2021 Order Following Prehearing Conference allowed San Benito to accept service of subpoenas for witnesses under its control. On May 27, 2021, OAH granted a continuance scheduling the case for hearing on June 8, 9, and 10, 2021.

On May 28, 2021, Student emailed a subpoena duces tecum to San Benito for San Benito's Superintendent, Shawn Tennenbaum's, hearing testimony. On June 2, 2021, San Benito filed a motion to quash the subpoenas on the grounds that Superintendent Tennenbaum's testimony was irrelevant to the proceedings because he had no knowledge of the issues before OAH about Student. Further, San Benito argued

that other witnesses Student already designated to testify at hearing, including Paulette Cobbs, would have information regarding San Benito's distance learning policy and its impact on Student. Therefore, San Benito asserted that Student failed to make the requisite showing of relevance, and reasonable necessity, to subpoena Superintendent Tennenbaum for hearing testimony.

Student did not file an opposition to the motion to quash. In a meet and confer, Student informed San Benito that Superintendent Tennanbaum's testimony was needed because he created San Benito's policy for students with special needs.

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.)

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states, "[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)." Thus, subpoenas are available to require the production of information that is reasonably necessary for a party to present their case at hearing.

In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings requires parties to comply with procedures described in California Civil Code. California Civil Code section 1985 governs the issuance of subpoenas. In accordance with the California Civil Code, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing with documents and to excuse the attendance of witnesses if documents are produced. Parties must also comply with the consumer protections of California Civil Code 1985.3 when seeking the production of the personal records of a consumer. (*Sehlmeyer v. Dept. of General Services* (1993) 17 Ca. App. 4th 1072.) A subpoena for the attendance of a witness must also meet the good cause requirement by a factual showing of why the testimony and/or production of records 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 did not show that Superintendent Tennenbaum has any information or knowledge regarding Student's free appropriate public education, the only issues before OAH. A free appropriate public education is called a FAPE. San Benito represented that Student's other witnesses have knowledge about San Benito's special education policy, including distance learning services provided to other students during the COVID-19 pandemic, and its impact on Student's FAPE issues. San Benito's general policymaking issues are not before OAH, and therefore irrelevant to this hearing. Therefore, Student did not show that Superintendent Tennenbaum's testimony was reasonably necessary to the issues before OAH. San Benito's motion to quash Superintendent Tennenbaum's hearing testimony is granted.

ORDER

1. San Benito's motion to quash Student's subpoena to Shawn Tennenbaum to appear at hearing as a witness is GRANTED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings