BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

TWIN RIVERS UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2024040199

OAH CASE NUMBER 2024030829

ORDER GRANTING STUDENT'S MOTION TO QUASH DISTRICT'S SUBPOENA DUCES TECUM TO THE CUSTODIAN OF RECORDS OF READ ACADEMY

MAY 24, 2024

On March 22, 2024, Twin Rivers Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2024030829, naming Student. On April 3, 2024, Student filed a Request for Due Process Hearing in OAH case number 2024040199, naming Twin Rivers. On April 5, 2024, OAH consolidated the two cases, designating Student's case as the primary case. The consolidated cases are presently set for hearing on May 29 and 30, 2024.

On May 13, 2024, Twin Rivers issued a subpoena duces tecum directed to the custodian of records of Read Academy, a private school in Sacramento that Student attends as a private placement. Twin Rivers sent a notice to consumer and a copy of the subpoena to Student's attorney on May 13, 2024, and served the subpoena duces tecum on Read Academy's custodian of records on May 20, 2024, via first class mail.

On May 16, 2024, Student filed a motion to quash Twin Rivers' subpoena duces tecum directed to the custodian of records of Read Academy, on grounds that it was untimely, overbroad, and failed to show a reasonable necessity for the documents sought.

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 applicable standard to subpoena documents in proceedings brought under the IDEA is the stricter "reasonable necessity" standard, instead of the "good cause" standard. However, both standards require a 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, Office of Administrative Hearings, referred to as 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.

NOTICE TO CONSUMER

The party issuing a subpoena duces tecum must serve a Notice to Consumer on the subject of a subpoena for personal records, not less than 10 days before the date for production of the personal records, plus the additional time required based on the method of service per Code of Civil Procedure section 1013. (Code Civ. Proc., § 1985.3, subd. (b).) Personal records are those records, whether maintained on paper or electronically, that are sought from those providing personal service to a party such as health care providers, psychiatrists, bankers, pharmacists, laboratories, insurance companies, telephone service providers and schools. (Code Civ. Proc., § 1985.3, subd.

(a)(1).) The proof of service of the notice to consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).)

DATE TO COMPLY WITH SUBPOENA

Code of Civil Procedure section 1985.3, subdivision (d), requires that a subpoena dues tecum must be served "in sufficient time to allow the witness reasonable time to locate and produce the records or copies thereof." Code of Civil Procedure section 2020.410, subdivision (c) defines sufficient time as "no earlier than 20 days after the issuance, or 15 days after the service" of the subpoena, whichever is later. Pursuant to Code of Civil Procedure section 1013, subdivision (a), a witness served within California by mail has an additional five days to locate and produce the requested records.

STUDENT'S MOTION TO QUASH TWIN RIVERS SUBPOENA DUCES TECUM AS UNTIMELY IS GRANTED

Twin Rivers served its subpoena duces tecum on the custodian of records of Read Academy in Sacramento by first class mail on May 20, 2024. The subpoena directed Read Academy to produce the requested records by the first day of hearing of this case on May 29, 2024. However, under the Code of Civil Procedure relied on by OAH, Read Academy cannot be required to locate and produce the requested records sooner than 20 calendar days of May 20, 2024, a date which falls on Sunday, June 9, 2024, and is therefore extended to Monday, June 10, 2024. (Code Civ. Proc., §§ 10 and 12.)

Twin Rivers subpoena duces tecum is untimely on its face, as it purports to require Read Academy's custodian of records to produce the requested documents within nine calendar days of the subpoena's service by mail. This defect cannot be corrected by modifying the subpoena to specify a later response date on or after June 10, 2024. At the prehearing conference in this case, called a PHC, the parties estimated

that the hearing would require six to eight days. Starting the hearing on May 29, 2024, and continuing the hearing day to day thereafter, Mondays and Fridays included, as specified in the PHC, the hearing would be completed between June 5-7, 2024, several days before Read Academy's production of documents would be due. Also, even if Read Academy produced the documents the morning of June 10, 2024, the list of documents requested is extensive, and it would presumably require days for Twin Rivers to review the documents, prepare examination questions based on the documents, and examine one or more witnesses. Twin Rivers' failure to serve a timely subpoena duces tecum on Read Academy is not good cause to continue or extend this case by the week or more that would be required to complete the hearing after Read Academy's timely production of documents.

Twin Rivers' arguments that OAH should not rely on relevant portions of the Code of Civil Procedure to determine whether a subpoena duces tecum is untimely, but should instead exercise discretion, is not supported by any case law, and is unpersuasive.

ORDER

1. Student's motion to quash Twin Rivers' subpoena duces tecum served on the custodian of records of Read Academy is granted on grounds that the subpoena duces tecum was not timely served. Read Academy is not required to produce any of the requested records.
2. This Order makes no determinations regarding Student's additional contentions that the subpoena duces tecum was overbroad, or failed to show a reasonable necessity for the documents sought.
3. Student shall immediately serve a copy of this Order on the custodian of records of Read Academy.



Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings