BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024070468

ORDER GRANTING IN PART DISTRICT'S MOTION TO QUASH SUBPOENAS DUCES TECUM OF DISTRICT WITNESSES DENYING STUDENT'S MOTION TO SHORTEN TIME FOR COMPLIANCE WITH SUBPOENA

NOVEMBER 22, 2024

On November 8, 2024, Student issued subpoenas duces tecum on the following witnesses: Josh Shleffar, Jerry Berkson, Cynthia Loleng-Perez, Christina Diaz, Teri Lee, Simon Worsham, Rebecca Shen-Lorenson, Nhat Hoang, Mena Khoury, and Karen Natori.

The subpoenas sought production of the requested documents the first day set for hearing on November 26, 2024.

On November 14, 2024, Palo Alto filed a motion to quash the duces tecum portions of the subpoenas for the ten named witnesses. Palo Alto did not object to Student's subpoena of the witnesses themselves. Palo Alto objected to the duces tecum portions of the subpoenas on the grounds that they were untimely, unsupported by a statement of necessity, and unreasonable.

On November 15, 2024, before prehearing conference, Student filed an opposition to Palo Alto's motion to quash, and a cross-motion that OAH shorten the time for Palo Alto's compliance with Student's originally-requested production date of November 26, 2024. Also on November 15, 2024, Student re-issued the 10 subpoenas duces tecum of the named individuals. This iteration of the subpoenas sought production of the requested documents on December 5, 2024, and included a statement of necessity for the records sought. Prehearing conference was also held on November 15, 2024, and the parties presented oral argument on the motions as well as the newly-issued subpoenas.

The foregoing recitation of filing dates takes into account that any filing with the Office of Administrative Hearings after 5:00 pm is deemed filed the following business day (Cal. Code of Regulations, § 1006).

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.)

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.

PALO ALTO'S UNTIMELINESS OBJECTION AND STUDENT'S MOTION TO SHORTEN TIME

California Code of Civil Procedure section 1985.3, subdivision (d), states that service of a subpoena dues tecum must be made "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 of the issuance, or 15 days after the service" of the subpoena, whichever is later.

Palo Alto objected to the subpoenas as untimely because 20 days did not exist between Student's issuance of the subpoenas duces tecum on the ten Palo Alto witnesses on November 8, 2024, and the date set for production on the first day of hearing on November 26, 2024. Further, Palo Alto argued that the untimeliness of the subpoenas was uncurable because latest date for production could only have been at least five business days before hearing, or November 19, 2024, which was the deadline by which the parties should have disclosed any evidence they planned to introduce at hearing. (Ed. Code, 56505(e)(7).) At the earliest, parties have access to the documents witnesses upload to Case Center the day of hearing, but usually not until the time for the respective witness's testimony. Palo Alto will not be prejudiced by a production date of December 5, 2024, allowing 20 days from date of re-issuance of the most recent subpoenas.

In the motion to shorten time, Student argued that Student should be excused from the 20-day requirement, because it issued the subpoenas on November 8, 2024, as soon as possible after Student became aware that the ten district employee witnesses required subpoenas. Further, Student also argued that the time between the issuance of the subpoenas on November 8, 2024, and the date sought for production on the first day of hearing, on November 26, 2024, is 18 days – only two days less than the time

required by law. At PHC, Palo Alto opposed Student's cross-motion to shorten time for compliance.

On November 15, 2024, Student re-issued the ten subpoenas duces tecum, making the new date for production December 5, 2024, or 20 days from issuance. Hearing in this matter is set to begin on November 26, 2024. The parties anticipate needing anywhere from 9-12 days for hearing. Taking into account the state holidays on November 28 and 29, December 5 falls within the time anticipated for hearing. Student did not establish good cause to shorten the time for Palo Alto witnesses' compliance with the subpoenas duces tecum because Student has cured any untimeliness by re-issuing the subpoenas and making production due on December 5, 2024, 20 days from issuance. Student's motion to shorten time is denied.

STATEMENT OF NECESSITY

Subpoenas must make a showing of reasonable necessity for the requested documents with a statement of facts showing the material and relevant information sought. (*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.) In its motion to quash, Palo Alto argued that the subpoenas duces tecum issued on November 8, 2024, were invalid because they did not include a statement of necessity for the records sought.

At the time Palo Alto made its motion to quash on November 14, 2024, no statement of necessity accompanied Student's subpoenas duces tecum at all. Thereafter, Student cured this defect by including a statement of necessity with each subpoena on November 15, 2024. The statement of necessity explained that the records sought by each subpoena duces tecum were created as part of the educational

program offered to Student, or as a result of contact with Student during the time she was receiving an educational program with Palo Alto. Since the program Palo Alto offered is at issue in the present case, the documents requested are reasonably necessary to prove Student's case.

At PHC, Student's counsel argued that the documents are especially necessary considering a pupil like Student, who, despite being 19 years of age, is minimally verbal and communicates mainly in Korean, and is unable to shed light on what she experienced within Palo Alto's educational program. At PHC, Palo Alto did not argue the invalidity of the statements of necessity included with the re-issued subpoenas. The re-issued subpoenas complied with the requirement that they be accompanied by a statement establishing reasonable necessity for production of the records. As such, Student's subpoenas do not fail on the basis that they were not accompanied by a statement of necessity.

SCOPE OF THE SUBPOENAS

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.

The subpoenas duces tecum served on Josh Shleffar, Jerry Berkson, Cynthia Loleng-Perez, Christina Diaz, Teri Lee, Simon Worsham, Rebecca Shen-Lorenson, Nhat Hoang, Mena Khoury, and Karen Natori sought the following information for all witnesses. The categories of requests are numbered here to facilitate reference.

1. Any service notes or logs, work samples or other documents created while working with, planning for, providing services, or otherwise interacting with [Student];

2. Calendar showing all appointments involving or for [Student] for the 2022-23, 2023-24, and 2024-25 [school years]. (appointments not for [Student] should be redacted);
3. Any communications (email, text, otherwise) referencing [Student] by name, or otherwise;
4. Any documents demonstrating [Student's] progress during 2022-23, 2023-24, and 2024-25 [school years] obtainable by you.

Palo Alto objected to the requests as unreasonable for being overly broad in scope.

Student's allegations assert that Palo Alto denied Student a FAPE for the 2022-2023, 2023-2024, and the 2024-2025 school years. Request 1 does not specify any time frame for the documents sought. Request 1 shall be limited in scope to these school years.

Request 3 is unclear and overly broad in requesting communications that reference Student "otherwise." The undersigned understands Request 3 to be an effort to obtain any communication regarding Student in particular, and will be modified to reflect this. Request 3 will also be limited to the school years at issue.

ORDER

1. Palo Alto's motion to quash Student's subpoenas on Josh Shleffar, Jerry Berkson, Cynthia Loleng-Perez, Christina Diaz, Teri Lee, Simon Worsham, Rebecca Shen-Lorenson, Nhat Hoang, Mena Khoury, and Karen Natori are granted in part and the subpoenas are hereby modified.
    a. Request 1 is limited in time to the 2022-2023, 2023-2024, and the 2024-2025 school years.

b. Request 3 is modified to read: "Any communications (email, text, otherwise) referencing [Student] by name, identification number, or any other convention used to refer to Student specifically, for the 2022-2023, 2023-2024, and the 2024-2025 school years."

2. Counsel for Student shall immediately serve a copy of this order on the person(s) authorized to receive service on behalf of Josh Shleffar, Jerry Berkson, Cynthia Loleng-Perez, Christina Diaz, Teri Lee, Simon Worsham, Rebecca Shen-Lorenson, Nhat Hoang, Mena Khoury, and Karen Natori.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings