BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024040570

ORDER GRANTING AND DENYING IN PARTS ORAL MOTION TO QUASH THE TIME FRAME OF ANGELIA WATKINS SUBPOENA DUCES TECUM BASED ON STUDENT'S AUGUST 12, 2024 WITHDRAWAL OF ISSUES

AUGUST 16, 2024

On April 12, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming San Diego Unified School District, called San Diego. OAH continued the due process hearing on May 13, 2024.

On July 17, 2024, Student issued a subpoena duces tecum to Angelia Watkins. The subpoena duces tecum requested Watkins to produce documents on

August 13, 2024, the first day of hearing. The subpoena duces tecum requests the production of e-mail correspondence, or other documents, whether on paper or stored electronically, dated between February 3, 2023, through August 18, 2023, regarding Student and/or Parents by name, initials, assumed name, moniker, or identification number, pertaining to:

1. Consideration of the recommendations of the independent psychoeducational assessment completed by Dr. Marshall, and consideration of Student's changed circumstances when offering a free appropriate public education; and/or
2. Consideration of any offer of specialized academic instruction, mental health and counseling services, behavior supports, and accommodations for mental health and behavior adequate to meet Student's needs.

Student represented she needed the documents to establish San Diego's knowledge of the severity of Student's special education needs and lack of parental participation. San Diego did not file a motion to quash the subpoena duces tecum within three business days of the service of the subpoena duces tecum. Therefore, this order does not determine the reasonable necessity for the categories of the documents sought in the subpoena duces tecum but determines only the appropriate time frame based on Student's withdrawal of issues on August 12, 2024, discussed below.

On August 12, 2024, Student withdrew issues 1a, 4a, 4b, 5, 6a, 6b, 6c, 6d, 6e, and 6f, set forth in the August 2, 2024, Order Following Prehearing Conference. Only issues 1b, 2, 3a, 3b, 3c, 3d, 3e, and 3f, set forth in the August 2, 2024, Order Following Prehearing Conference, pertaining to the March 7, 2023 individualized education program, remained for determination at hearing.

On the first day of hearing San Diego made an oral motion to quash Watkins' subpoena duces tecum seeking to limit the time frame for production of documents to March 7, 2023. San Diego objected to production of the subpoena duces tecum documents from March 7, 2023, to August 18, 2023, as no longer reasonably necessary based on Student's withdrawal of issues. Attorney Josh Walden represented San Diego could not have filed a written motion to quash before the first day of hearing because Student only withdrew issues the day before, triggering the need for San Diego to challenge the time frame of the subpoena duces tecum.

Student agreed to limit the Watkins' subpoena duces tecum from February 3, 2023, to June 15, 2023, as opposed to August 18, 2023, end date, set forth in the subpoena duces tecum. Student opposed San Diego's motion to quash the subpoena duces tecum's March 7, 2023 end date.

A party to a due process hearing under the Individuals with Disabilities 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, 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.

San Diego's oral motion to quash to limit the time frame of the subpoena duces tecum was timely because of Student's withdrawal of issues less than 24-hours before the first day of hearing. The parties agreed the first day of the relevant period for OAH determination in this matter is February 3, 2023. Student's attorney, Meagan Nunez, asserted the last day of the 2022-2023 school year was June 15, 2023, and San Diego did not disagree. Student represented at hearing that she seeks remedies for the 2022-2023 school year, from February 3, 2023, to June 15, 2023. Therefore, limiting the Watkins' subpoena duces tecum from February 3, 2023, to June 15, 2023, the only period for which Student seeks OAH determination of issues and remedies, was reasonable and reflective of the reasonable necessity for the requested documents after Student's withdrawal of issues.

Therefore, San Diego's motion to quash to limit the time frame of Watkins' subpoena duces tecum to the March 7, 2023, end date, is denied. San Diego's motion to quash to limit the time frame of Watkins' subpoena duces tecum is modified and Watkins is ordered to produce responsive documents for the period between February 3, 2023, to June 15, 2023, as opposed to the February 3, 2023, to August 18, 2023, time frame set forth in the subpoena duces tecum.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings