BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010524

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO QUASH SUBPOENA DUCES TECUM

NOVEMBER 1, 2024

On January 16, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent, naming Los Angeles Unified School District.

Administrative Law Judge Laurie Gorsline, called the ALJ, heard this matter by videoconference on September 17, 18, 20, 24, and 25, 2024. The history of this case is summarized in the Amended, Corrected and Supplemental Order Denying Challenge for Cause and Denying Motion Regarding Revision of Issues, dated September 24, 2024. On September 25, 2024, based on a doctor's note OAH received from Parent and the discussion with Los Angeles Unified's attorney, Brian Davenport, as reflected on the

record, the ALJ determined there was good cause to continue the hearing to November 5, 2024.

On October 24, 2024, Los Angeles Unified filed a motion to quash a subpoena duces tecum issued by OAH on October 3, 2024, pursuant to Parent's request, directing Los Angeles Unified to produce an array of documents on November 4, 2024. The records sought include among others, Student's progress reports, individualized education plans, evaluations and reports, transition plans, awards, records of extracurricular activities, start and end dates of behavior intervention implementation, implementation records, records of work, pay and volunteer hours, K-12 cumulative report record, all school-related projects, and various other emails and "Schoology communications."

The grounds for the motion to quash are that Student failed to establish reasonable necessity for the documents sought and the subpoena requests documents not relevant to the issues. Los Angeles Unified also claims the subpoena is overbroad, vague, and burdensome. It asserts Student does not have a right to prehearing discovery, it provided Parent with instructions on how to request Student's educational records on October 4, 2024, and that Parent is attempting to circumvent the procedures for obtaining Student's records. Los Angeles Unified argues Parent has not sought Student's records in the last nine months and Parent has had access to Student's records through its service of the hearing exhibits on September 10, 2024. It also claims the General Counsel's Office never agreed to accept service of a subpoena for Los Angeles Unified by email.

OAH did not receive any opposition to the motion from Student.

APPLICABLE LAW

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), called the IDEA. Rather, a party to a due process hearing under IDEA 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).

California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings but does not confer the right to prehearing discovery. (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).)

Education Code section 56505, subdivision (a), provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Thus, the right to obtain documents before hearing in special education

cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District* (9th Cir. 2018) 739 Fed. Appx. 870, 873 (*Burnett*); see also *Newport-Mesa Unified School District v. State of California Department of Education* (C.D.Cal. 2005) 371 F.Supp.2d 1170, 1173, 1179.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing five business days prior to the date of the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).)

However, a party has the right to require the other party or third parties to produce documents at hearing upon a proper showing that the documents are "reasonably necessary" to litigate the issues at hearing. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Thus, the documents requested may include documents other than the student's education records and documents the educational agency has produced for hearing, so long as the party seeking production of those documents has demonstrated that they are reasonably necessary and no other bar to production exists.

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act, also called FERPA, to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); see also Ed. Code, § 49061, subd. (b) [defining pupil records]; 34 C.F.R. § 99.3 [defining education records].) The United States Supreme Court in *Owasso Ind. School District v. Falvo* (2002) 534 U.S. 426 *(Falvo*) after conducting an analysis of FERPA provisions related to education records, determined that not every record relating to a student satisfies the

FERPA definition of "education records." Specifically, the Supreme Court examined the FERPA provision that requires educational institutions to "maintain a record, kept with the education records of each student" that "list[s] those who have requested access to a student's education records and their reasons for doing so." (*Falvo*, *supra*, 534 U.S. at p. 434.) The Court concluded that because this single record must be kept with the education records, "Congress contemplated that education records would be kept in one place with a single record of access." (*Id.*) The Court further concluded that "[b]y describing a 'school official' and 'his assistants' as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar…" (*Id.* at pp. 434-435.)

In *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, when determining whether an investigative report was an education record, citing *Falvo*, the Court of Appeal stated that "the statute was directed at institutional records maintained in the normal course of business by a single, central custodian of the school. Typical of such records would be registration forms, class schedules, grade transcripts, discipline reports, and the like." (*Id.* at p. 754.) The Court of Appeal found that the investigative report, "which was not directly related to the private educational interests of the student," was not an education record, because "the report was not something regularly done in the normal course of business," and "was not the type of report regularly maintained in a central location along with education records…in separate files for each student." (*Id.* at p. 755.)

In *S.A. ex rel. L.A. v. Tulare County Office of Education* (E.D.Cal. Sept. 24, 2009, No. CV F 08–1215 LJO GSA) 2009 WL 3126322, aff'd. *S.A. v. Tulare County Office of Education* (E.D.Cal. October 6, 2009, No. CV F 08-1215 LJO GSA.) 2009 WL 3296653, the district court found that documents such as school district emails concerning or

personally identifying a student that had not been placed in his permanent file were not educational records as defined under FERPA. Citing *Falvo*, the court stated Congress contemplated that educational records would be kept in one place with a single record of access to those records. Because the emails student requested had not been placed in his permanent file and were therefore not "maintained" by the school district, the emails were not educational records, and the school district was therefore not required to produce them under a request for student records under the IDEA. (2009 WL 3126322, at p. 7.)

In *Burnett*, parents argued that the school district committed a procedural violation when it only turned over emails concerning the students that had been printed and added to the student's file. The Ninth Circuit Court of Appeals affirmed the district court's determination that the school district was not required to turn over emails that were not "maintained" in a physical folder or secure electronic database. (739 Fed. Appx. at p 873.) "The Supreme Court has interpreted the word 'maintained' in FERPA as 'to keep in existence or continuance; preserve; retain' and reasoned that '[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database.'" *(Ibid.*, quoting *Falvo*, 534 U.S. 426 at pp. 432-433.)

A public agency is required to comply with a request for school records without unnecessary delay before any meeting regarding any individualized education program or any hearing and in no case more than five business days after the request is made orally or in writing. (Ed. Code, § 56504.) If a school record includes information on more than one pupil, the parents of those pupils have the right to inspect and review only the information relating to their child or to be informed of that specific information. (*Ibid.*)

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.

DISCUSSION

STUDENT IS NOT ENGAGED IN PREHEARING DISCOVERY

Although special education law does not contain any provision authorizing prehearing discovery, Los Angeles Unified's objection on this ground is misplaced. Opening statements have yet to be conducted in this case, but the hearing began on September 17, 2024. Moreover, Student is seeking the requested documents pursuant subpoena during the hearing, not as prehearing discovery.

PARENT IS ENTITLED TO EDUCATION RECORDS

It appears that many of the documents sought fall within the category of "education records," which can be requested at any time pursuant to Education Code section 56504 and no showing of reasonable necessity is required. Nor is there any limit on the scope of the education records that Parent can request. To the extent the subpoena seeks education records, Parent was permitted to make this request orally or in writing. Los Angeles Unified apparently has a form for this process, but it cites to no authority which required Parent to use that form. To the extent the documents sought are education records, Los Angeles Unified was required to produce them notwithstanding Parent's use of a subpoena to request them. Given that Parent has requested the production of the documents during the ongoing hearing, sending the

request by email to Attorney Davenport, the lawyer representing Los Angeles Unified in this case, was sufficient to trigger Los Angeles Unified's obligation to produce Student's education records to Parent.

Los Angeles Unified failed to adequately address which of the documents requested by subpoena are education records, and Student filed no opposition to the motion to address this issue. As such, it is unclear if all the documents sought are education records within the meaning of FERPA and Education Code section 49061, and the case law interpreting those statutes. The subpoena duces tecum appears to seek documents directly related to Student, but the ALJ is unable to specifically determine if all the requested records were "maintained" in Student's file or on a permanent secure electronic database.

Nevertheless, to the extent the requested records are "education records," Los Angeles Unified had an obligation to produce them within no more than five days after the request was made. However, it appears that Los Angeles Unified has already produced some of the requested records when it uploaded its documents into Case Center on September 10, 2024. Parent has had access to these documents since September 10, 2024, by registering with Case Center. Accordingly, except for the documents which Los Angeles Unified has already uploaded into Case Center, Los Angeles Unified must produce to Parent all requested education records as defined in title 20 United States Code section 1232g and Education Code section 49061.

STUDENT HAS NOT ESTABLISHED REASONABLE NECESSITY

To the extent Student seeks records which are not education records, the declaration attached to the subpoena duces tecum fails to demonstrate that the documents sought are "reasonably necessary" for Student to present his case at hearing.

Specifically, the declaration attached to the subpoena fails to explain why each of the documents is relevant to the issues and "reasonably necessary" for Student to present his case at hearing. The declaration merely offers one conclusory sentence that the documents are reasonably necessary for the proper presentation of this case but offers no factual explanation to support this conclusion. A more particularized showing is required. On this ground alone, the subpoena is fatally defective as to the documents which are not education records, if any.

ORDER

1. Los Angeles Unified's motion to quash is granted, in part, and denied, in part. To the extent the records subpoenaed are Student's education records, the motion is denied. The motion to quash is otherwise granted.
2. Except for the records already produced on September 10, 2024, Los Angeles Unified is ordered to produce to Parent by November 4, 2024, all requested education records as defined in title 20 United States Code section 1232g and Education Code section 49061, and the applicable regulations and case law interpreting those statutes and regulations.
3. Los Angeles Unified is not required to produce to Parent any records already produced through its document upload into Case Center on September 10, 2024.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings