BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025030636

ORDER DENYING MOTION TO QUASH SUBPOENA AND MODIFYING DATE OF PRODUCTION

AUGUST 1, 2025

On March 17, 2025, Student filed a request for due process naming Riverside Unified School District. On June 27, 2025, Student's motion to amend was granted.

SUBPOENA DUCES TECUMS OF DR. CHANG AND GUNN PSYCHOLOGICAL

On July 18, 2025, Riverside issued to subpoena duces tecum to Jenss Chang and Gunn Psychological. The request seeks production by August 12, 2025, of assessment notes and protocols, including interview notes, related to a May 10, 2023, independent educational evaluation conducted by Dr. Jenss Chang while affiliated with Gunn Psychological. Riverside's requested time period for the above records for Dr. Chang is

February 2023 through May 2023. Riverside's requested time period for the above records from Gunn Psychological was February 2023 through October 2023.

Riverside argues the subpoenas are reasonably necessary. Riverside asserts they are reasonable because Student filed a due process request against Riverside raising issues related to Student's presentation and how her disabilities impact her educationally, adaptively, and functionally.

A notice to consumer was sent to Student's attorney. It advised Student of the subpoena directed to Dr. Chang and Gunn Psychological on July 18, 2025.

On July 24, 2025, Student filed a motion to quash the subpoenas directed to Dr. Chang and Gunn Psychological. Student argues Riverside did not establish a reasonable necessity for production of the documents. Riverside did not specifically identify the documents it seeks but rather requested broad categories such as assessment notes and protocols. Student argues Riverside has full knowledge of Dr. Chang's recommendation. The report is not being challenged by Riverside. The report is more than two years old and is no longer relevant to the matter at issue. Finally, Student argues Riverside is conducting impermissible discovery.

Riverside filed its opposition to the motions to quash on July 31, 2025. Riverside acknowledges the two subpoena duces tecum mirror each other because it is unsure which entity is in control of the records. Riverside argues many of the issues Student raises in her July 24, 2025, motion to quash were addressed in the June 25, 2025, Order Granting Motions to Quash.

Riverside's subpoenas duces tecum are limited in time and scope. Riverside highlights portions of Student's complaint where Dr. Chang made specific

recommendations. Riverside argues it is seeking the information solely to help understand the data and the conclusions Dr. Chang made based on that data.

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.

NO RIGHT TO PREHEARING DISCOVERY

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.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "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 (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

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. (5 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. Pre-hearing discovery 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.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

Riverside's subpoenas direct Dr. Chang and Gunn Psychological to produce the subpoenaed records August 12 through the 14, 2025, which is the date and time the due process was scheduled. A joint request for mediation and continuance of the due process hearing was granted on August 1, 2025, setting the due process hearing for which is September 16 through 18, 2025. Riverside has no statutory right to pre-hearing discovery. Riverside's subpoenas should have been scheduled for production on the first day of hearing. Section 1987.1 of the Code of Civil Procedure, provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it. Therefore, the subpoenas are modified to change the date of production to September 16, 2025. The documents shall be produced to the Administrative Law Judge hearing this matter. For virtual due process hearings, a link to upload the records will be sent electronically.

REASONABLE NECESSITY FOR THE RECORDS

Student argues that the subpoenas duces tecum should be quashed because it fails to make the requisite 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.)

Student's declaration in support of the motion to quash states the documents are not relevant to the issue pled as the independent educational evaluation report. Student further asserts that the report was reviewed at an IEP meeting in May 2023 and any period of time to challenge the report and Dr. Chang's findings has passed.

Riverside's declaration challenges Student raised issues regarding her educational presentation and noted a specific discrepancy on Student's processing score and this is relevant to Riverside's case in light of the *Endrew F.* standard which requires child's progress be considered in light of the child's unique circumstances. Riverside's declaration establishes that the documents subpoenaed may be material and relevant. Specifically, Riverside requests specific documents, assessment notes and assessment protocols from a discrete time period that point to an assessment protocol where a potential discrepancy exists.

ORDER

1. Student's motion to quash Riverside's subpoena to Dr. Jenss Chang and Gunn Psychological is DENIED. The records shall be produced by Dr. Jenss Chang and Gunn Psychological to the Administrative Law Judge on the first day of the hearing.
2. Riverside's subpoena duces tecum is modified to change the production of the documents to the hearing location on the first day of hearing, presently September 16, 2025.

3. Dr. Chang and Gunn Psychological shall deliver Student's records to case center subpoena duces tecum file, by 9:30 a.m. on September 16, 2025.

Tiffany Gilmartin

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings