BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ALPINE UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2023060498

ORDER GRANTING, IN PART, MOTION TO QUASH SUBPOENA AND MODIFYING SUBPOENA

SEPTEMBER 5, 2023

On June 15, 2023 and June 27, 2023, Student filed a request for due process hearing and an amended request, respectively, naming Alpine Union School District. On July 14, 2023, an amended scheduling order was issued scheduling the case for hearing on September 6 and 7, 2023.

On August 14, 2023, Student issued a subpoenas duces tecum on Alpine's counsel, who agreed to accept service. The subpoena to Yvette Maier sought emails, writings, documents, and electronically stored information identifying Student or Parents from June 14, 2021 through the date of hearing and all service logs related to

Student. Alpine employs Maier as the executive director of human resources and student services.

On August 31, 2023, Alpine filed a motion to quash the subpoenas on the grounds that the subpoena states broadly the items sought and does not state whether Maier has the items under her possession or control. Alpine also moves to quash on grounds that the subpoena seeks impermissible discovery. Alpine argues that Student served the subpoena after being unsatisfied with Alpine's response to a recent student records request. The Office of Administrative Hearings, referred to as OAH, has not received a response from Student.

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, 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.

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).)

Student's subpoena directs Maier to produce the subpoenaed records and testify on the first day of hearing, September 6, 2023. Student seeks production of documents at hearing, rather than seeking impermissible discovery before hearing.

Alpine also argues the subpoena duces tecum is overly broad in scope and time. Request number 2 is not limited in scope of time and none of the requests are limited to issues pertaining to the identification, assessment, or provision of special education to Student and, in this way, are overly broad.

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 subpoena is modified to limit the scope of each request to produce

documents or information sought from June 14, 2021 through the date of filing of Student's amended complaint, June 14, 2023. The subpoena duces tecum's scope shall also be limited to matters pertaining to the proposal or refusal to initiate or change the identification, assessment, or educational placement of Student or the provision of a free appropriate public education, or FAPE, to Student, including the provision or failure to provide any services offered by Alpine in Student's individualized education programs, the provision or withholding of consent for assessment or IEPs, including any portion thereof, or the availability of programs appropriate for Student's special education needs. (See, Cal. Ed. Code, § 56501, subd. (a).)

Alpine argues that the subpoena 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 subpoena states that documents and information requested are material to the hearing as they contain information related to the events alleged in the complaint. Student further seeks information regarding Alpine's knowledge of the severity of Student's need for special education and accommodations, internal communications to establish a lack of parental participation, and services logs demonstrating the frequency of services provided, which would also support requested remedies. Student contends seeking such documents for several months through record requests and alleges having only obtained limited documents.

Student does not identify documents by name or date or subject matter. Student is not expected to identify with great particularity documents which Student did not

create or over which Student did not maintain control. Any concerns regarding overbreadth were addressed by modification of the subpoena, as indicated above.

The ruling on Alpine's motion to quash has no impact on whether Student may submit such documents as evidence during the due process hearing. Each document's admissibility will be determined on a case-by-case basis.

ORDER

1. Alpine's motion to quash Student's subpoena is granted in part and the subpoena is hereby modified. Alpine shall produce documents and information dated between June 14, 2021 and June 14, 2023. Alpine shall produce all requested documents and information pertaining to each of the three requests which are related to the proposal or refusal to initiate or change the identification, assessment, or educational placement of Student or the provision of a free appropriate public education, or FAPE, to Student, including the provision or failure to provide any services offered by Alpine in Student's individualized education programs, the provision or withholding of consent for assessment or IEPs, including any portion thereof, or the availability of programs appropriate for Student's special education needs. (See, Cal. Ed. Code, § 56501, subd. (a).)

2. Counsel for Alpine shall immediately serve a copy of this order on Maier and on the school site from which documents would be found as well.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings