BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024100920

OAH CASE NUMBER 2024090320

ORDER GRANTING MOTION TO DENY STUDENT'S RECORDS REQUEST

OCTOBER 29, 2024

On September 9, 2024, Santa Monica-Malibu Unified School District filed with the Office of Administrative Hearings, called OAH, a Request for Due Process Hearing in OAH case number 2024090320, naming Student. OAH case number 2024090320 is referred to as Santa Monica-Malibu Unified's Case. A Request for Due Process Hearing is called a complaint.

On October 25, 2024, Parent on behalf of Student filed a complaint in OAH case number 2024100920, naming Santa Monica-Malibu Unified. OAH case number 2024100920 is referred to as Student's Case.

On October 28, 2024, OAH granted Student's motion to consolidate Santa Monica-Malibu Unified's Case with Student's Case. OAH designated Student's Case as the primary case and the 45-day timeline for issuance of the decision in the consolidated cases based on the date of the filing of the complaint in Student's Case. The due process hearing in consolidated cases is scheduled for December 3, 4, and 5, 2024.

On October 20, 2024, Student filed a motion seeking an order from OAH for Santa Monica-Malibu Unified to provide Parent with records. The motion listed records involving individualized education program, called IEP, related documents, IEP team meeting recordings, assessments, and various communications involving Santa Monica-Malibu Unified employees and non-employees. The motion did not specify a date as to when Santa Monica-Malibu Unified should produce the records.

On October 25, 2024, Santa Monica-Malibu Unified filed an opposition to the motion. Santa Monica-Malibu Unified contends that it provided Parent with Student's educational records that exists to date.

Santa Monica-Malibu Unified also contends the motion should be denied because Student failed to serve Santa Monica-Malibu Unified with a subpoena duces tecum. In addition, Santa Monica-Malibu contends the request should be denied because discovery is not available in special education matters and that email correspondences are not student records as defined under California Education Code section 56504. Further, Santa Monica-Malibu Unified contends the request fails to show how the requested records are relevant to the issue in this matter, and that the request is unduly overboard and burdensome.

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 California special education proceedings, the hearing officer shall have the right to issue subpoenas, which is an order to appear and give testimony, and subpoenas duces tecum, which is an order to produce records, 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.)

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 Individuals with Disabilities Education Act 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 but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

Education Code, section 56505, subdivision (a), provides that the 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. Prehearing 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 five business days prior to the date of the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).)

Here, Student failed to serve Santa Monica-Malibu Unified with a subpoena duces tecum supported by declaration establishing reasonable necessity for production of the records that are not required to be maintained in Student's educational records.

In addition, the hearing in the consolidated cases is scheduled to begin on December 3, 2024. As a result, any request for records that are not maintained in Student's educational records to be produced prior to December 3, 2024, amounts to impermissible prehearing discovery. For these reasons, Santa Monica-Malibu Unified's motion to deny Student's records request is granted.

This Order does not preclude Student from renewing his records request through a subpoena duces tecum. If Student seeks records through a subpoena duces tecum, Parent may access the forms and instructions at: https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings