BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT AND

FONTANA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023090141

ORDER MODIFYING SUBPOENA DUCES TECUM AND DENYING MOTION TO QUASH SUBPOENA

FEBRUARY 9, 2024

On September 1, 2023, Parents on behalf of Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing, naming Rialto Unified School District. On September 25, 2023, Student filed an amended compliant to name Fontana Unified School District as an additional party. The amended complaint was deemed filed October 4, 2023.

Student filed a second amended complaint on January 2, 2024, which OAH deemed filed January 5, 2024. On January 5, 2024, OAH issued a scheduling order, scheduling the case for hearing on February 21, and 22, 2024.

On February 2, 2024, Student's attorney issued by first class mail, a subpoena duces tecum on Fontana Unified. Student's attorney also emailed the subpoena to Fontana Unified's attorney on February 4, 2024. A Notice to Consumer was not included with the subpoena. Student's attorney provided a copy of the subpoena to Rialto Unified on February 7, 2024.

The subpoena seeks any and all communications by Fontana Unified's employees relating to Student. The subpoena defined communication as emails, letters, and correspondences. The subpoena seeks records of communications that occurred from May 1, 2021, through the present date. The subpoena requests Fontana Unified produce the records on the first day of hearing, February 21, 2024.

On February 6, 2024, Fontana Unified filed a motion to quash the subpoena and contends the subpoena was defective because it failed to include a Notice to Consumer. At the February 9, 2024, prehearing conference, Fontana Unified argued that Fontana Unified's employees are the consumers related to the subpoena. Fontana Unified contends the subpoena should be quashed for failing to include a Notice to Consumer for each Fontana Unified employee whose records are being sought.

Fontana Unified also contends the subpoena is untimely because the subpoena does not provide Fontana Unified 20 days to comply. Fontana Unified claims that it is required to produce responsive records by February 14, 2023, five business days prior to the start of the hearing. Therefore, Fontana Unified argues the subpoena is untimely because it requires Fontana Unified to comply with the subpoena in less than 20 days from the time the subpoena was issued. Fontana Unified further claims the subpoena is untimely because Student should have issued the subpoena sooner. Lastly, Fontana Unified contends the subpoena should be quashed because Student failed to serve a copy of the subpoena to Rialto Unified.

At the February 9, 2024, prehearing conference, Student objected to the motion. Student contends he, not Fontana Unified's employees, is the consumer for the subpoena. Therefore, Student argues he was not required to serve a Notice to Consumer on himself, nor include a Notice to Consumer with the subpoena. Student also contends the subpoena was timely. At the prehearing conference, Rialto Unified took no position on the motion to quash.

A party to a due process hearing under the Individuals with Disabilities Education Act, referred to as the 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); see also Ed. Code, § 56505, subd. (e).)

In California special education proceedings, the hearing officer shall have the right to issue subpoenas duces tecum to compel a witness to produce documents or papers upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) California law requires that a Notice to Consumer be served on the subject of a subpoena for personal records, not less than 10 days prior to the date for production of records plus the additional time required based on the method of service per Code of Civil Procedure section 1013. (Code Civ. Proc., § 1985.3, subd. (b).) A consumer means any individual, partnership of five or fewer persons, associations, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as an agent or fiduciary. (Code Civ. Proc., § 1985.3, subd. (a)(2).)

Personal records are those records, whether maintained on paper or electronically, that pertain to a consumer and are sought from those providing personal service to the consumer such as health care providers, psychiatrists, bankers,

pharmacists, laboratories, insurance companies, telephone service providers and schools to name a few. (Code Civ. Proc., § 1985.3, subd. (a)(1).) The proof of service of the Notice to Consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).)

A subpoena duces tecum for production of personal records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies of the records. (Code Civ. Proc., § 1985.3, subd. (d). Code of Civil Procedure section 2020.410, subdivision (c) defines sufficient time as no earlier than 20 days of the issuance, or 15 days after the service of the subpoena, whichever is later.

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.

Here, Student is the consumer whose personal records are being sought. The subpoenaed witness is Fontana Unified, not the individual employees of Fontana Unified. Student is the individual who has transacted with, or used the services of, Fontana Unified. The subpoena seeks emails, letters, and correspondences maintained by Fontana Unified, that involve communications by Fontana Unified's employees that pertain to Student. The subpoena does not seek personal records of Fontana Unified's employees. Therefore, Student was not required to serve a Notice to Consumer to individual employees of Fontana Unified. Accordingly, Fontana Unified's motion to quash the subpoena deuces tecum because it failed to include a Notice to Consumer is denied.

Fontana Unified's motion to quash the subpoena duces tecum as untimely is also denied. The subpoena seeks production on February 21, 2024, 19 days from the date of issuance. Accordingly, the subpoena is modified to compel production by February 22, 2024, to allow Fontana Unified reasonable time to comply.

Fontana Unified's argument that it must comply with the subpoena by February 14, 2024, is unpersuasive. The parties have the right to receive from the other parties at least five business days before the hearing, a copy of all documents the parties intend to present at the hearing. (Ed. Code § 56505, subd. (e)(7).) The documents exchanged pursuant to Education Code section 56505, subdivision (e)(7) involve documents the parties intend to rely on at the hearing, not documents responsive to a subpoena duces tecum.

Fontana Unified's contention that the subpoena duces tecum was untimely because Student had ample time prior to February 2, 2024, to subpoena the records is also unpersuasive. In general, there is no right to prehearing discovery in due process proceedings under the IDEA. (20 U.S.C. § 1400 et seq.) Therefore, Student would not have been permitted to compel production of records before the actual commencement of the first day of hearing. Furthermore, Fontana Unified did not request through its motion, or during the prehearing conference, additional time to comply with the subpoena.

In sum, Fontana Unified's motion to quash Student's subpoena duces tecum, as modified by this Order, is denied.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings