BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026030239

ORDER GRANTING MOTION, IN PART TO QUASH SUBPOENA

APRIL 28, 2026

On February 25, 2026, Student filed a request for due process naming Berkeley Unified School District, called Berkeley. This case is set for hearing on May 5, 6, and 7, 2026.

On March 31, 2026, Berkeley issued subpoenas duces tecum on Tilden Preparatory School, called Tilden and Berkwood Hedge School, called Berkwood. A notice to consumer was sent to Student advising Student of the subpoenas directed to Tilden and Berkwood. Copies of the subpoenas were sent to Student with the notice to consumer. On April 21, 2026, Student filed a motion to quash on the grounds that the subpoenas fail to satisfy the reasonable necessity standard, are overbroad, vague and

seek records beyond the period Student attended the schools, seek attorney-client privileged communications and attorney work product, seek records protected by the psychotherapist-patient privilege, the constitutional right to privacy, the Family Educational Rights and Privacy Act and California Education Code section 49060 et seq, and amount to a burdensome and impermissible fishing expedition.

The subpoenas to Tilden and Berkwood were identical in the documents sought. Both subpoenas sought records, including electronic records in the following categories: 1) assessment and evaluation reports, including drafts; 2) Student's application for admission and/or enrollment and any all attached supportive documents; 3) contracts for enrollment, services, enrollment records and registration documents of Student; 4) special education documents referencing Student and/or Parents; 5) correspondence, including but not limited to, letters and emails, between and among the following: employees of Berkwood/Tilden and other employees of Berkwood/Tilden regarding Students and/or Parents; employees of Berkwood/Tilden and Parents regarding Student; and employees of Berkwood/Tilden and Carly Christopher and/or any other staff, attorneys or other employees associated with The Special Education Collaboration Project regarding Student and/or Parents; 6) Student's attendance records; 7) Student's disciplinary records; 8) Student's mental-health related records; 8) report cards and/or progress reports documenting Student's achievement and progress in Berkwood's/Tilden's educational program; 9) service logs documenting services provided to Student at Berkwood/Tilden; 10) billing records that reference Student and/or Parents. The requests were submitted to the custodian of records for Tilden and Berkwood. The documents were requested to be produced by May 5, 2026, the first day of the due process hearing.

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.

REASONABLE NECESSITY FOR THE RECORDS

Student 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.)

Berkeley's declaration in support of the subpoena states production of the requested records are reasonably necessary for Berkeley to defend itself in Student's due process complaint. Student attended Tilden and Berkwood during the statutory period applicable to the complaint. Berkeley has no other way to obtain these records.

Berkeley's declarations establish that the documents subpoenaed are material and relevant. Specifically, Student is alleging that Berkeley denied Student a FAPE during the time period that Student attended Tilden and Berkwood. Berkeley does not have access to Student's records at these schools, which are necessary to defend itself against Student's claims.

SCOPE OF THE SUBPOENA

Student contends that the subpoena is overly broad as the subpoena requests documents for time periods when Student did not attend Tilden and Berkwood. At the prehearing conference, Student confirmed that Student's dates of attendance for

Berkwood was from August 2025 until February 2026. Student's dates of attendance for Tilden were March 13, 2026, through present. Berkeley's subpoena requests records from Berkwood from August 2024 through May 5, 2026. Berkeley's subpoena requests records from Tildon from August 1, 2025, through May 5, 2025. The subpoenas are overly broad.

Student further contends that subpoena items 5(a) and 5(b) are overly broad. Item 5 requests correspondence between and among (a) employees of Berkwood to other employees of Berkwood and employees of Tilden to other employees of Tilden regarding Student and/or Parents and (b) employees of Berkwood/Tilden and Parents regarding Student. The subpoenas are overly broad and include documents outside the scope of the relevant matter.

The subpoena is modified to limit the time period for records to the period of Student's enrollment plus two months prior to account for an application and pre-enrollment period. Berkeley's subpoena request for Berkwood is limited to June 2025 through February 2026. Berkeley's subpoena request for Tilden is limited to December 2025 through May 5, 2026.

Subpoena Items 5(a) and (b) are modified to limit correspondence between the identified individuals to communications related to Student's educational program, progress, and special education placement and services.

STUDENT'S RIGHT TO MEDICAL PRIVACY

Student contends that Berkeley's request for any and all of Student's mental health-related records are protected by the psychotherapist-patient privilege, which belongs to the patient. Student further contends that Berkeley's request is not narrowly tailored to directly relevant information.

California law recognizes a constitutional right to privacy in an individual's medical history. (See, *Pettus v. Cole*, (1996) 49 Cal. App. 4th 402, 440.["the 'zones of privacy' created by Article 1 , section 1 of the California Constitution extend to the details of one's medical history"]; *Palay v. Superior Court, (1993)* 18 Cal. App. 4th 919, 932, ["Fundamental to the privacy of medical information is the ability to control its circulation …"] The constitutional right of privacy is not absolute, but is subject to invasion where a compelling public interest is involved. (*Freed v. Home Depot U.S.A, Inc.* (S.D. Cal 2019) 2019 W.L. 183833, p. 5; *Hill v. National Collegiate Athletic Association* (1994) 7 Cal. 4th 1, 37.) State law governs an individual's right to privacy in a civil matter. (Fed. Rule Evid. 501; *Freed v. Home Depot U.S.A.* (S.D. Cal. 2019) 2019 WL 183833.)

Student has a right to privacy in their medical records. Student has not placed their entire medical history at issue. Student maintains their right to privacy as to medical matters not at issue in this case. (*Freed, supra*, at p. 5. ["The party seeking the constitutionally protected information bears the burden of establishing that the information is directly relevant to the claims at issue."].)

This is not to say that Student has an absolute right to block disclosure of any information related to their medical history. A right of privacy is not absolute. (*Hill, supra* at p. 38.) A court must construe any claim of waiver, due to placing medical matters at issue, narrowly and the competing compelling interest is found only where it is established that the material sought is directly relevant to the litigation. (*Freed*, *supra,* at p. 5 citing *Tylo v. Superior Court* (1993) 55 Cal. App 4th 1379, 1387.)

The applicable standard requires a statement of "reasonable necessity" designating the "exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case." Berkeley's declaration

does not state the reason that Student's mental health related records are necessary. Here, subpoena item eight as written was overbroad. Rather than tailoring the document request to those mental health related records related to Student's educational services, all of Student's mental health-related records were requested. At the prehearing conference the parties argued their positions. Berkeley clarified that only mental health/social emotional records as the documents related to Student's education, specifically ERMS services were being requested. Student's due process complaint alleges Berkeley denied Student a FAPE by failing to offer an IEP with mental health services amongst other relevant services. Therefore, Student's educationally related mental health records are reasonably necessary for Berkeley to defend itself against Student's allegations. The subpoena is modified to require the production of educationally related mental health records.

ATTORNEY-CLIENT PRIVILEGE PROTECTION

Student contends that Berkeley's subpoenas request documents that are protected by the attorney-client privilege and the attorney work-product doctrine. Student cites *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733–734, and Cal. Code Civ. Proc., § 2018.030 in their argument that this privilege extends to communications with third parties when made to further the client's representation. Item 5(c) of Berkeley's subpoenas requests correspondence between and among any and all employees of Tilden Prep and Carly Christopher and/or any other staff, attorneys, or other employees associated with The Special Education Collaboration Project regarding Students and/or Parents. The documents requested in Item 5(c) are privileged. Item 5(c) of the subpoenas is quashed.

ORDER

1. Student's motion to quash Berkeley's subpoenas to Tilden and Berkwood is granted in part. The records shall be produced by Student and Tilden and Berkwood in the areas identified in this order by the first day of the due process hearing, May 6, 2026.

    a. The time period of Berkeley's subpoena request for Berkwood is limited to June 2025, through February 2026.

    b. The time period of Berkeley's subpoena request for Tilden is limited to December 2025, through May 5, 2026.

    c. Subpoena Item 5(a) and (b) is modified to limit correspondence between the identified individuals to communications related to Student's educational program, progress, and special education placement and services.

    d. Subpoena Item 5(c) is quashed.

    e. Subpoena Item 8 is modified to require the production of educationally related mental health records.

Katherine Roe
Katherine Roe (Apr 28, 2026 16:25:36 PDT)

Katherine Roe
Administrative Law Judge
Office of Administrative Hearings