BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023040286

ORDER GRANTING MOTION TO QUASH SUBPOENA

APRIL 27, 2023

On April 7, 2023, Student filed a request for due process naming Salinas Union High School District. On April 10, 2023, a scheduling order was issued scheduling the case for hearing for expedited issues on May 3 and 4, 2023. A non-expedited hearing was set for May 23, 24, and 25, 2023.

On April 18, 2023, Student issued a subpoena duces tecum on Lan Clayton, special education case manager and special education teacher. A copy of the subpoena was sent to counsel for Salinas. The subpoena directed to Clayton sought testimony and notes, memos, emails, or other communications about or relating to Student's special education services for the 2022-2023 school year in Clayton's possession, except for those documents considered privileged under the attorney work product or

attorney-client privilege, to be produced the first day of the expedited hearing May 3, 2023.

On April 19, Salinas filed a motion to quash the subpoenas on the grounds that Student failed to establish reasonable necessity for the documents sought and that the subpoena was overbroad, burdensome, and failed to provide reasonable specificity.

On April 20, 2023, Student issued a revised subpoena on Clayton requesting testimony and the same documents as in Student's April 18, 2023, subpoena but changing the scope of the requested documents to those from November 1, 2023, to March 31, 2023. Student's April 20, 2023, issuance of the revised subpoena on Clayton rendered Student's April 18, 2023 subpoena duces tecum and Salinas's April 19, 2023 motion to quash the April 18, 2023 subpoena, moot.

On April 26, 2023, Salinas filed a motion to quash Student's April 20, 2023, revised subpoena duces tecum issued on Clayton, stating the same grounds as in its motion to quash Student's original subpoena on Clayton, namely, failure to establish a reasonable necessity for the subpoenaed documents and the subpoena was overbroad, burdensome, and failed to provide reasonable specificity.

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

Salinas 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 materiality and relevance of the information sought.

Student's description of records to be produced, attached to the subpoena duces tecum, states:

These documents are reasonably necessary to Student's case-in-chief and are relevant under Evidence Code §350 to provide evidence during the expedited hearing of:

1. District's failure to offer appropriate IEP and behavioral services;
2. District's failure to provide appropriate IEP and behavioral services;
3. District's failure to implement Student's IEP and behavioral services;
4. The predetermination of District's decision at the January 9, 2023, manifestation determination meeting;
5. Witness credibility; and
6. Impeachment/Rebuttal evidence.

Salinas correctly concluded that most of Student's claims of necessity and relevance of the requested documents were not reasonable as the appropriateness of Student's individualized education program, called an IEP, appropriateness of IEP services, and predetermination of Salinas's decision at the January 9, 2023 manifestation determination meeting, were not raised as issues in Student's due process complaint. However, Student did establish a reasonable necessity for the requested documents as relevant and necessary regarding Salinas's failure to implement Student's IEP and behavior services which is raised as an issue in Student's due process complaint. Accordingly, Salinas's claim that Student did not establish a reasonable necessity for the documents sought is rejected.

SCOPE OF THE SUBPOENA

Salinas contends that the subpoena duces tecum is overly broad as the subpoena lacks specificity as to the documents requested, and instead requests vague, general categories of written correspondence without limitation. However, not specifically noted in Salinas's motion to quash, is Student's nonsensical and thus unclear, request for documents from November 1, 2023, a date which has not yet occurred, to March 31, 2023. This lack of clarity regarding Student's requested documents renders Student's April 20, 2023 subpoena of Clayton defective. Accordingly, Salinas's motion to quash Student's April 20, 2023, subpoena duces tecum is Granted.

ORDER

1. Salinas's motion to quash Student's April 18. 2023 subpoena of witness Lan Clayton is denied, as moot.
2. Salinas's motion to quash Student's April 20, 2023 subpoena duces tecum of witness Lan Clayton is granted.

Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings