BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020060316

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO QUASH SUBPOENAS DUCES TECUM AND MODIFYING THE RETURN DATE

AUGUST 3, 2020

On June 9, 2020, Student filed with the Office of Administrative Hearings, or OAH, a request for due process naming San Dieguito Union High School District. On June 10, 2020, a scheduling order was issued setting the hearing for August 4 through August 6, 2020. On July 27, 2020, upon a showing of good cause, OAH granted a continuance of the hearing to September 22, 2020.

Between July 14 and July 22, 2020, Student issued 14 subpoenas duces tecum requiring the following persons to appear and produce documents at hearing: school psychologists Debra Lawler and Heather Lutz, education specialists Elizabeth Marshall

and Mary Sisti, speech language pathologists Jessica Marinelli and Sarah Gonzales, program supervisor Kelli Maul, counselor Jennifer Magruder, Deputy Superintendent Mark Miller, Superintendent Robert Haley, school principal Rob Coppo, and assistant principal Michael Santos, as well as San Diego County Office of Education employee Julie Cole, and Student's advocate Sara Frampton. Copies of the subpoena(s) were sent to San Dieguito's counsel, who accepted service of the subpoenas on behalf of its employees.

With the exception of the subpoenas to San Dieguito administrators, each of the subpoenas require the witness to produce at hearing "a copy of any and all WRITINGS, as that term is defined in California Evidence Code § 250, in YOUR possession, custody and/or control pertaining to [Student] from June 3, 2018 to present, including but not limited to" and then lists numerous categories of documents sought by Student, along with a description of the witness' alleged involvement in the case. Almost every category begins with "Any and all WRITINGS pertaining to…" or "Any and all WRITINGS pertaining to, evidencing, memorializing and/or otherwise referencing…," and all of the subpoenas to the non-administrator school district employees require production of "Any and all EMAILS between YOU and any staff member and/or administrator of SDUHSD in which [Student] was discussed, mentioned and/or otherwise referenced."

The subpoenas directed to administrators Miller, Haley, Coppo and Santos seek to compel the witnesses' writings pertaining to communications with anyone regarding Student from June 3, 2018 to the present, documents about other students as well as documents that pertain to the suicides of students since August 1, 2018. Among other things, the subpoenas seek all writings pertaining to communications received by the witnesses which identify by name all students in the 7th through 12th grades who were at the highest risk for suicide between August 2018 and June 2020. The subpoenas also

seek all writings that pertain to any messages sent by the witnesses to members of the public or received from the public regarding student suicides. The Miller and Haley subpoenas also seek communications with Mr. Stan Collins, including any documents he handed out at public forums, as well as "Any and all WRITINGS" related to an alleged sexual assault of Student while at Logan River Academy in early 2019. The Coppo and Santos subpoenas also seek the production of "Any and all WRITINGS" generated pertaining to two September 2018 events in which Student was sent home for making unsafe, threatening suicidal remarks.

The subpoenas directed to the non-school district employees, specifically Julie Cole and Sara Frampton, seek every document pertaining to Student since June 3, 2018.

On July 23, 2020, San Dieguito filed with OAH a motion to quash all 14 subpoenas duces tecum on the grounds that they are overbroad, vague, unduly burdensome, constitute an impermissible attempt at discovery, seek documents irrelevant to the issues in this case, and violate the privacy rights of San Dieguito employees. San Dieguito argues that the parties' prior settlement agreement waived claims through June 2018, Student withdrew himself from the school district in April 2019, and that Student has failed to make the required showing that documents from 2019 and 2020 are relevant to the issues for hearing. San Dieguito asserts that the subpoenas seek documents unrelated to Student and that information regarding its compliance with AB 2246 is irrelevant and outside of OAH jurisdiction. San Dieguito characterizes the subpoenas as an impermissible "fishing expedition," having the potential to return hundreds of documents irrelevant to this case. San Dieguito argues that Student has not demonstrated reasonable necessity or the materiality of the documents sought. It asserts that Student has not demonstrated that the records cannot be obtained in some other way, such as from his private providers. It maintains

that complying with the subpoenas would be unduly burdensome, requiring a search of email, office, phone and personal records of twelve separate employees while the school district is closed for summer break and these employees are unavailable, compounded by the school closures and related orders issued by the Governor's office.

On July 27, 2020, Student filed opposition to the motion, arguing that the motion should be denied or that Student be permitted additional time to meet and confer. Student contends San Dieguito never met and conferred prior to filing this motion to quash, and that Student has since agreed to limit the scope of the subpoenas in some respects. Student claims all of these witnesses are on the school district's witness list and that the subpoenas are specific, narrowly tailored in time and scope, and seek documents which are required for Student's case. He contends that the affidavits supporting the subpoenas contain the requisite showing of materiality and necessity and there has been no adequate showing of undue burden. Student also argues that San Dieguito has no standing to quash the Frampton subpoena, and that some of the documents subpoenaed are listed on San Dieguito's PHC statement, specifically correspondence between the school district, and outside providers and Parents.

On July 27, 2020, the motion was argued during the PHC. San Dieguito represented that Coppo and Santos were not members of Student's individualized education program, or IEP, team and did not attend any of his IEP team meetings. San Dieguito's counsel clarified that it does not represent witnesses Frampton or Cole. It also objected that the records could contain other students' names and privileged information, and that the records sought from the Superintendent and Deputy Superintendent regarding general school district policy, and compliance with assembly bills pertaining to at-risk students have no bearing on Student's FAPE claims. Respondent argued it listed the witnesses on their PHC statement only because Student

served subpoenas on those witnesses. Student claimed that the categories are self-limiting, and Student has agreed to limit the subpoenas to the period from June 3, 2018 to the dates in July 2020 when the subpoenas were issued. Student argued Santos attended a September 2018 IEP team meeting, and although administrators Miller, Haley and Coppo had no direct involvement with Student, they held public town meetings regarding students' mental health. At the conclusion of the oral argument, the ALJ took the motion under submission.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act (20 U.S.C. § 1400 et seq.), or 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 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).)

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 IDEA. 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. 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(e)(7).)

SUBPOENAS DIRECTED TO SAN DIEGUITO EMPLOYEES

Here, the subpoenas duces tecum are overbroad and Student failed to make the requisite showing of reasonable necessity for each of the requested documents. On their face, the subpoenas seek every document ever created about Student since June 3, 2018 without any adequate justification for the scope of the subpoenas. Although some of the declarations supporting the subpoenas state the witnesses alleged involvement in the case, the declarations fail to establish why each writing ever made about Student over a two-year period is reasonably necessary to prove Student's case. In fact, none of the subpoenas evidence a focused effort by Student at obtaining documents reasonably necessary to prove an issue in the case, but rather an attempt to obtain every document ever created pertaining to Student during a two-year period regardless of its relevance or materiality, or lack thereof, to the issues at hearing. The subpoenas also improperly require the production of privileged documents, and Student has made no attempt to exclude such documents from their scope.

For example, the declarations supporting the subpoenas to Lawler and Lutz set forth their alleged involvement in the case, but neither provide any proper demonstration of reasonable necessity. Specifically, there is no adequate showing requiring the production of every "writing" as that term is defined by the Evidence Code, related to Student for the last two years as required in the first paragraph of each subpoena, nor all of the documents in the bulleted list of documents following that first paragraph. As with the other subpoenas, Student is seeking every email between the witness or any staff member and/or administrator in which Student was discussed, mentioned and/or otherwise referenced. Yet, there has been no showing that every email ever written is relevant or material to the issues in this case. The subpoenas supporting declaration description of the witness' alleged involvement is inadequate to

require the witnesses to produce each document sought. The conclusory statement in the Lutz subpoena that the documents are relevant and necessary because Student has alleged a denial of FAPE is insufficient.

The subpoenas served on the other school district employees are also defective for the same reasons. The subpoena directed to Marshall describes her involvement in the case as pertaining to a June 11, 2018 IEP team meeting. The declaration attached to the subpoena falls far short of demonstrating any valid basis for requiring the witness to produce every document ever created regarding Student for the subsequent two-year period. Boilerplate statements that the documents are necessary because Student has alleged a denial of FAPE, and that the documents may be used to satisfy the burden of proof or for impeachment, are insufficient to demonstrate reasonable necessity absent a more particularized showing for each document requested.

The subpoenas on Gonzalez and Magruder are similarly defective. Their involvement appears to be limited to a September 2018 IEP team meeting. There is no adequate demonstration of reasonable necessity for each of the documents sought in the declaration supporting the subpoenas. Likewise, the subpoenas directed to Marinelli, Maul and Sisti state the witnesses' involvement pertained to events in the fall of 2018, but the declarations supporting the subpoenas fail to make a proper showing for compelling every document ever created pertaining to, mentioning or referencing Student in the over two-year period. Nor do subpoenas supporting declarations adequately demonstrate the necessity for requiring the witnesses to produce each category of document listed in the subpoenas based on the description of the witnesses' alleged involvement in the case.

Code of Civil Procedure, provides that a court may make an order quashing a subpoena entirely or modifying it. Although the witnesses may have documents

relevant and material to the issues in the case, because the subpoenas are overbroad and there has been no proper showing of reasonable necessity supporting production of each of the records, the subpoenas cannot be modified by OAH. Accordingly, the subpoenas directed to witnesses Lawler, Lutz, Marshall, Sisti, Marinelli, Gonzalez, Maul and Macgruder are quashed in their entirety without prejudice to the issuance of new subpoenas duces tecum to comport with this Order.

SUBPOENAS TO THE SCHOOL DISTRICT ADMINISTRATORS

San Dieguito has also moved to quash the subpoena served on San Dieguito administrators Coppo, Santos, Miller and Haley. As with the subpoenas served on the other school district employees, the subpoenas directed to the administrators are grossly overbroad. Student has failed to make the requisite showing of reasonable necessity for each of the requested documents.

On their face, the subpoenas seek every "writing" ever created pertaining to communications regarding Student with anyone at the school district since June 3, 2018 without any adequate showing of reasonable necessity justifying the scope of the request. There is no justification requiring production of documents identifying other students at risk for suicide. Similarly, Student has failed to establish a basis for requiring production of any and all writings pertaining to any message sent by the witnesses to members of the public or the school district community, or from the public, pertaining to suicides or self-harm. There has been no showing that documents related to Mr. Stan Collins or other documents handed out at public forums are relevant or material to any of the hearing issues. The same is true regarding the handouts referenced in the Haley subpoena and the records from the crisis task force and other committees.

While some documents in some of the categories listed in the subpoenas might well be material to the issues in this case, Student has not demonstrated reasonable necessity or the materiality for every document sought in every category. For example, while some of the documents identifying the resources available to Student regarding issues with self-harm might be relevant and necessary to the FAPE issues, Student has failed to establish reasonable necessity for "Any and all WRITINGS, including but not limited to, emails, personal notes, letters, memos, etc., generated by [the witness] that pertain to and/or reference the [school district's] mental health, psychological and/or social emotional wellbeing resources that are available to students and parents within the District who may be dealing with issues regarding self-harm, suicide, ideation, and suicide" between June 3, 2018 and July 2020. Nor has Student properly justified the request seeking every writing since June 3, 2018, "including but not limited to emails, personal notes, letters, memos, etc.," pertaining to "the efficacy, or lack thereof, of any [school district] program pertaining to identifying and serving the needs of those students who are at risk for self-harm and/or suicide." Although some of the subpoena supporting declarations state the witnesses alleged involvement in the case, reiterate some of Student's claims and make boilerplate and conclusory assertions regarding the relevance and necessity of the documents, the declarations fail to adequately establish why each of the requested documents sought are reasonably necessary to prove Student's case.

Student has sought any and all documents generated by Santos and Coppo regarding the September 2018 incidents when Student was sent home, but the declarations attached to the subpoenas do not state why those documents are reasonable necessary to prove a claim in this case. The same is true regarding the request seeking every document generated or received by Haley or Miller pertaining to the alleged sexual assault of Student while at Logan River. Again, Student is attempting

to obtain every document regarding any topic or event since 2018 regardless of the relevance or materiality of every document to the issues for hearing. And, Student has made no attempt to exclude the production of privileged documents from the scope of requests.

Because the subpoenas are overbroad and there has been no adequate showing of reasonable necessity supporting production of each of the records, the subpoenas cannot be modified by OAH. Accordingly, the subpoenas directed to witnesses Miller, Haley, Coppo and Santos are quashed in their entirety without prejudice to the issuance of new subpoenas duces tecum to comport with this Order.

SUBPOENA DIRECTED TO STUDENT'S EDUCATIONAL CONSULTANT

San Dieguito has also moved to quash the subpoena served on the advocate hired by Parents, Sara Frampton. San Dieguito has failed to demonstrate that it has standing to object to the Frampton subpoena. San Dieguito's counsel does not represent Frampton and Frampton is not a school district employee.

San Dieguito's claim that the Frampton subpoena production would violate the privacy rights of its employees is without merit. To the extent the subpoena requires production of communications or other documents referencing school district employees, there has been no showing by San Dieguito that those employees had an expectation of privacy in their communications with Frampton. Frampton was Student's advocate and as such, should have anticipated that all of their dealings with Frampton would be shared with Student and Parents.

Accordingly, the motion to quash the Frampton subpoena is denied. However, because OAH continued the hearing to September 22, 2020 after the subpoena was issued, the subpoena is modified to require production on September 22, 2020. Student

shall immediately notify Frampton that no documents should be produced until September 22, 2020.

SUBPOENA DIRECTED TO THE COUNTY OFFICE OF EDUCATION EMPLOYEE

San Dieguito has also moved to quash the subpoena served on San Diego County Office of Education, Julie Cole. While the subpoena may have some of the same defects as the other subpoenas issued by Student's counsel, San Dieguito has failed to demonstrate that they have standing to object to the Cole subpoena. As with the Frampton subpoena, San Dieguito's counsel does not represent Cole and Cole is not a school district employee. San Dieguito has failed to make any proper showing that the production of documents pursuant to the subpoena would violate its rights or the rights of its employees.

Accordingly, the motion to quash the Cole subpoena denied. However, because OAH continued the hearing to September 22, 2020 after the subpoena was issued, the subpoena is modified to require production on September 22, 2020. Student shall immediately notify Cole that no documents should be produced until September 22, 2020.

ORDER

1. San Dieguito's motion to quash Student's subpoenas duces tecum to Debra Lawler, Elizabeth Marshall, Sarah Gonzalez, Heather Lutz, Jennifer Magruder, Jessica Marinelli, Kellie Maul, Mark Miller, Mary Sisti, Michael Santos, Rob Coppo, and Robert Haley is granted. The subpoenas duces tecum are hereby quashed.

2. San Dieguito's motion to quash the subpoenas duces tecum directed to Sara Frampton and Julie Cole is denied.

3. Subpoenas duces tecum on Sara Frampton and Julie Cole are modified to include a return date of September 22, 2020. Student's counsel shall immediately notify Sara Frampton and Julie Cole that no documents should be produced until September 22, 2020.

4. Counsel for Student shall immediately serve a copy of this order on all of the persons subpoenaed.

IT IS SO ORDERED.

DocuSigned by:
Laurie Gorsline
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Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings