BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ARCADIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021050068

ORDER DENYING MOTION TO QUASH SUBPOENA

AUGUST 11, 2021

On May 3, 2021, Student filed a request for due process naming Arcadia Unified School District. On May 21, 2021, an order granting a continuance in this matter was granted scheduling the case for hearing on August 31 through September 2, 2021.

On August 6, 2021, Arcadia Unified School District issued a subpoena duces tecum on San Marino Unified School District. A notice to consumer was sent to Student advising Student of the subpoenas directed to San Marino Unified School District. Copies of the subpoenas were sent to San Marino Unified School District with the notice to consumer. The subpoena to San Marino Unified School District sought copies of Student's records provided by Arcadia Unified School District up to January 19, 2019, when Student transferred, which Student does not oppose. It also seeks copies of

Student's records from San Marino Unified School District's own records from January 19, 2019 to the end of the 2018-2019 school year, which Student opposes.

On August 9, 2021, Student filed a motion to quash the subpoenas on the grounds that Arcadia Unified School District was not entitled to his records after he transferred. On August 10, 2021, Arcadia Unified School District opposed the motion arguing the requested records will assist in its defense of Student's due process request.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in 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 special education proceedings in California the hearing officer has the right to issue subpoenas and subpoenas duces tecum 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, the Office of Administrative Hearings, referred to as OAH, relies by analogy on 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.

NO RIGHT TO PREHEARING DISCOVERY

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. (20 U.S.C. § 1400 et seq.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at the hearing. 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.

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 authorized 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 tecums are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Pre-hearing 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 maintained by the school district at any time. (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 the first day of hearing. (Ed. Code, 56505(e)(7).)

Student claims that Arcadia Unified School District is using the subpoena duces tecum to conduct pretrial discovery. However, the subpoena directs San Marino Unified School District's Special Education Director to produce the subpoenaed records to the Caselines Evidence program for the first day of hearing. The issued subpoena does not seek prehearing discovery. The subpoena was issued prior to the hearing to give adequate notice for the production of documents and comply with the required notice to consumer.

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.)

Arcadia Unified School District's declaration in support of the subpoena states the requested records will assist in the defense of Student's due process request alleging when Parent's received San Marino Unified School District's translated records, they came to believe Arcadia Unified School District's representations were false, and thus Student was entitled to allege issues beyond the two-year statute of limitations. Student contends the educational records after January 2019, when Student transferred, are not relevant to the issues.

Arcadia Unified School District's declaration establishes that the documents subpoenaed are material and relevant. Specifically, it is entitled to review the documents which Parents allege caused them to believe false misrepresentations were made and information was withheld. Student seeks to go beyond the two-year statute of limitations for each issue in the complaint, and Arcadia Unified School District is entitled to the documents Parents relied upon which formed their opinions, to assist in the preparation of its defense at hearing.

SCOPE OF THE SUBPOENA

Finally, Student contends that the subpoena duces tecum, Item 2, is overly broad as the subpoena requests documents for time periods not covered by Student's complaint. Student's allegations assert that Arcadia Unified School District engaged in misrepresentations and withheld information from Parents, denying them the right to meaningful parental participation during the 2018-2019 school year. However, as discussed above, Arcadia Unified School District is entitled to review the documents which Student alleges formed the basis of Parents' opinion that it made false misrepresentations and withheld the information, even though it is beyond the time frame when Student was enrolled in its district.

ORDER

1. Student's motion to quash Arcadia Unified School District's subpoena duces tecum to the Special Education Director of San Marino Unified School District is DENIED. The records shall be produced to the Administrative Law Judge on the first day of the hearing in this matter by uploading the records to Caselines.
2. Counsel for Arcadia Unified School District shall immediately serve a copy of this order on Special Education Director of San Marino Unified School District.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings