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 DUCES TECUM FOR YISELL LOPEZ

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 Yisell Lopez, school psychologist. A copy of the subpoena was sent to counsel for Salinas. The subpoena directed to Lopez sought:

1. Special education service logs for Student for the 2022-2023 school year;

2. All evaluations, protocols, interview notes and forms, observation reports and notes, Student history documents, and communications of any kind related to Student used as part of Lopez' 2022 functional behavioral analysis;
3. A copy of Lopez' 2022 FBA conducted on Student; and
4. Notes, memos, emails, or other communications about or relating to Student's special education services in Lopez' possession or control for the 2022-2023 school year, except documents considered privileged under attorney-work product or attorney-client privilege.

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. Additionally, Salinas asserts that Student failed to show that the requested documents could not be obtained by some other more reasonable means. In fact, Salinas asserted that the service logs requested by the subpoena had already been provided to Student through an April 14, 2023 prior records request. Salinas asserts that said records were provided to Student, pursuant to the records request, on April 21, 2023.

On April 20, 2023, Student issued a revised subpoena on Lopez, requesting testimony and the same documents as in Student's April 18, 2023, subpoena but changing the scope of the requested notes, memos, emails, or other written communications to September 1, 2022, to March 31, 2023. Student's April 20, 2023, issuance of the revised subpoena on Lopez 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 Lopez, stating the same grounds as in its

motion to quash Student's original subpoena on, namely, failure to establish a reasonable necessity for the subpoenaed documents and the subpoena was overbroad, burdensome, failed to provide reasonable specificity, and failed to establish that the requested documents could not be obtained by more reasonable means, such as a document request.

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.

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. District's failure to conduct a sufficient functional behavior analysis;
5. The predetermination of Student's IEP services at the January 9, 2023, manifestation determination meeting;

6. Witness credibility; and
7. 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; failure to conduct a sufficient functional behavior assessment; and predetermination of Student's IEP services at the January 9, 2023 manifestation determination meeting, were not raised as issues in Student's due process complaint. Although Student's argument that the requested documents are relevant to Salinas's implementation of Student's IEP, Student's request for records exceeds the time frame of Student's issue. Furthermore, Student's request for all written communications by the school psychologist relating to Student's services, from September 1, 2022, to March 31, 2023, without any specificity, is unreasonably broad. As such, any claim that such information is reasonably necessary and relevant to the implementation of Student's IEP, is speculative. Salinas established that Student's special education service logs had just been requested days before issuing the subpoena to Lopez. Lastly, Student's request for evaluation protocols, notes and forms used in Student's 2022 functional behavior assessment are not relevant to the sole issue of Student's complaint, namely, the appropriateness January 9, 2023 manifestation determination.

Student's April 20, 2023 subpoena issued to Lopez lacked a showing of reasonable necessity for the records sought and the subpoena's request for documents is unreasonably broad and burdensome. Accordingly, Salinas's motion to quash Student's April 20, 2023 subpoena duces tecum for school psychologist Lopez is Granted.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings