BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

UKIAH UNIFIED SCHOOL DISTRICT,

and

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2024010195

OAH CASE NUMBER 2023100750

ORDER DENYING STUDENT'S MOTION TO QUASH SUBPOENA FOR R. TEJEDA

FEBRUARY 22, 2024

On October 23, 2023, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, naming Ukiah Unified School District. The Office of Administrative Hearings is called OAH. On December 1, 2023, OAH granted Student's request to amend the complaint. On January 4, 2024, Ukiah filed a complaint naming Student. On January 12, 2024, OAH consolidated Student's Case with Ukiah's Case and set the due process hearing for February 27, 2024, with a prehearing conference, called a PHC, on February 16, 2024.

On February 7, 2024, Ukiah issued a subpoena duces tecum on Raul Tejeda. A notice to consumer was sent to Student's attorney, Joshua Cruz, advising them of the subpoena directed to Raul Tejeda. The subpoena to Raul Tejeda sought correspondence and communications between Tejeda, Student, Parent, and Cruz and all documentation relating to Tejeda's evaluation of Student. The subpoena duces tecum directed Tejeda to produce the records by February 27, 2024, the first day of the due process hearing.

On February 19, 2024, Student filed a motion to quash the subpoena on the grounds that it was defective on its face, not properly served, and failed to establish the necessity of the documents. On February 20, 2024, Ukiah opposed the motion arguing any defect or error in service was harmless and Student's motion to quash was not timely filed and did not include good cause for the late filing.

SUBPOENAS DUCES TECUM

A party to a due process hearing under the Individuals with Disabilities 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 documents or papers 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, 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.

SUFFICIENT SERVICE

Student argues he was impermissibly served by email to his attorney without being asked if his attorney would accept service on behalf of Student and Parent. However, Student's attorney has consented to email service, and represents Student in this matter. Thus, he can accept email service of the subpoena duces tecum on Student's behalf. (Code Civ. Proc., § 1985.3, subd. (b)(1).)

CONSUMER NOTICE IS NOT FACIALLY DEFFECTIVE

California law requires that a notice to consumer be served on the subject of a subpoena for personal records not less than 10 days prior to the date for production of records plus the additional time required based on the method of service per Code of Civil Procedure section 1013. (Code Civ. Proc., § 1985.3, subd. (b).) Personal records are those records, whether maintained on paper or electronically, that are sought from those providing personal service to a party such as health care providers, psychiatrists, bankers, pharmacists, laboratories, insurance companies, telephone service providers and schools to name a few. (Code Civ. Proc., § 1985.3, subd. (a)(1).) The proof of service of the notice to consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).)

Student argues Ukiah included the wrong address concerning the proof of service for the notice to consumer. Student alleges Ukiah should have listed Parent's mailing address in the proof of service section but instead listed the witness's address, Raul Tejeda. Student argues Ukiah's failure to include the correct address means it is facially defective and should be quashed.

Here, Ukiah served the subpoena duces tecum and a copy of the notice to consumer on Tejeda. Ukiah included a proof of service that it served both documents on Tejeda. Ukiah did not include a proof of service that it served either document on Student. However, Student included in his motion to quash the email Ukiah sent Student's attorney with a copy of the subpoena duces tecum and the notice to consumer. Therefore, Ukiah properly served the subpoena duces tecum and notice to consumer, and Student did not prove the notice to consumer is facially defective.

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 pursuant to *Johnson* and *Seven Up Bottling Company*.

Ukiah did not include a declaration in support of the subpoena. Ukiah included a description of the documents and a sentence that states "The items listed on the attachment are likely to provide information as to Student's disability and the type of educational programming that is appropriate in light of his disability." Ukiah requested communications between Tejeda, Student, Parent, and their attorney as well as documents related to Tejeda's evaluation.

Ukiah failed to establish the subpoenaed documents are material and relevant. However, Student failed to provide good cause for why he did not adhere to OAH's order that all prehearing motions be filed three days prior to the PHC. During the February 16, 2024, PHC, the parties were specifically ordered to provide good cause as to why any subsequent motion filed was not filed three days prior to the PHC. Student filed the motion to quash on February 19, 2024, after the February 16, 2024, PHC. Student did not include in the motion to quash a declaration as to why the motion was not filed three days prior to the PHC. Student filed a subsequent response on February 21, 2024, stating his late filing was because the parties had not had a chance to meet and confer on the issue. Student's explanation did not establish good cause for the late filing of the motion to quash. Student received the subpoena duces tecum on February 7, 2024, nine days before the PHC. Student had ample time to meet and confer with Ukiah prior to the February 16, 2024, PHC, and to file the motion to quash. Therefore, Student's motion to quash Ukiah's subpoena to Raul Tejeda is denied. Raul Tejeda is

required to produce the requested records to the Administrative Law Judge by the first day of hearing.

IT IS SO ORDERED.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings