BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

SAN DIEGO UNIFIED SCHOOL DISTRICT,

and

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2024090140

OAH CASE NUMBER 2024060965

ORDER GRANTING MOTIONS TO QUASH SUBPOENAS

DECEMBER 16, 2024

On June 27, 2024, San Diego filed a request for due process naming Student. On September 4, 2024, Student filed a request for due process naming San Diego. OAH consolidated the two matters on September 12, 2024. The consolidated matters are set for hearing starting on December 17, 2024.

On or about November 27, 2024, Student served a subpoena duces tecum on Angelia Watkins, who is apparently a custodian of San Diego's student records. The subpoena required the production of a wide variety of records. On December 5, 2024, San Diego moved to quash the subpoena on the grounds that it is overly broad,

duplicative, and unreasonably burdensome. On December 10, 2024, Student filed an opposition.

On or about December10, 2024, San Diego served subpoenas duces tecum for records held by:

- the custodian of records at NewBridge School,
- Steve Mayo, Director of NewBridge School,
- Sara Tira, a special education advocate,
- Patrick Frost, general counsel for High Tech High,
- Amy Briggs of High Tech High, and
- Crystal Bejarano, of Connect 4 Kids Psychological Services.

On December 6, 2024, Student moved to quash all six subpoenas on the ground that there was no good cause to produce the documents, and on December 11, 2024, San Diego filed an opposition.

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 (orders 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).)

Student's subpoena duces tecum instructs Angelia Watkins to produce copies of ten broad categories of documents. San Diego argues that the subpoena duces tecum should be quashed because it fails to make the requisite showing of reasonable necessity. The subpoena contains a declaration of necessity signed by attorney Peter Cuevas, which San Diego argues is not adequate.

Here, the subpoena is plainly overbroad. Student already has many records that were produced in response to a routine request for student records. Student is also pursuing a request under the California Public Records Act. There is no way to tell from the subpoenas or pleadings which records are already in Student's possession.

The declaration of necessity states that records were not "fully provided" in response to Student's requests. However, rather than identifying the records that were not provided, Student simply asks for all records between November 29, 2023, and December 17, 2024, that apply to particular subjects. Student requests, for example, all "electronic records, emails, and communication logs" regarding Student or his Parents that were created by a lengthy list of people. The list includes all of Student's case managers, all the special education teachers in Lafayette Elementary School, the principal of the school, and every speech language pathologist and occupational therapist "assigned to Lafayette" during the period of time at issue, whether or not the provider was assigned to Student.

The declaration of necessity does not claim any knowledge that any of these people actually mentioned anything about Student's needs, educational program or placement in the requested records, and its demand for records mentioning Parents is nowhere explained or justified.

The subpoena seeks all correspondence relating to San Diego's decision to cease contracting with NewBridge School, which Student apparently attended at some point. But it does not assert that any of that correspondence actually mentions Student or his Parents or had anything to do with Student. The request is justified only by the claim that the documents would "assist in determining" whether the District's decision to revoke its contract with NewBridge affected the Student's offer of FAPE.

The subpoena seeks writings from all of Student's case managers because they "may have been involved" in the development of the offer of FAPE .

The declaration of necessity provides similar explanations for the other categories of documents sought.

APPLICABLE LAW

Student defends the Watkins subpoena duces tecum by equating "reasonable necessity" in the regulation with "relevant" and "material" in civil litigation, and then argues that the document demands described above are relevant and material to the issues in this case. Student then uses all these terms interchangeably in her argument.

Student greatly overstates the applicability of the Code of Civil Procedure to special education due process hearings. Student asserts that "OAH customarily applies the California Code of Civil Procedure to its analysis of subpoenas." No citation accompanies this erroneous claim. Student mistakenly relies on decisions such as *Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, and *Seven Up Bottling Company v. Superior Cour*t (1951) 107 Cal. App.2d 71, for the proposition that a subpoena duces tecum in a special education due process matter may be justified by a showing that the documents sought are "relevant" and "material" to issues in the case. However, both those decisions predate the IDEA. They address then-existing standards of good cause

for subpoenas duces tecum issues by a superior court. Neither decision addresses the standards for subpoenas duces tecum in special education cases, OAH, or any administrative agency. Relying on them, Student applies many of the civil discovery standards in the Code of Civil Procedure to the Watkins subpoena. Student repeatedly claims, for example, that production of various documents "will assist in determining" some factual issue. That is far from a showing of reasonable necessity.

It is true that OAH sometimes looks to analogous provisions of the Code of Civil Procedure when special education law does not specifically address a subject. For example, OAH applies roughly the same rules as does the Code of Civil Procedure to regulate service of process and the payment of expenses to witnesses. It borrows some aspects of the Code's rules for motions to quash subpoenas and for determining the applicability of monetary sanctions for misconduct.

These analogies are selective and discretionary and are used to answer questions special education law does not specifically resolve. The Code of Civil Procedure does not, by its terms, apply to special education due process hearings. OAH does not rely on analogies to the Code of Civil Procedure when the question at issue has a specific answer in special education law. One such specific answer concerns the standard for issuance of subpoenas duces tecum. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

If Student were correct in conflating civil discovery standards with special education requirements, the reasonable necessity" standard would be meaningless. OAH would routinely apply Code of Civil Procedure standards to discovery disputes, which it does not do. Student makes no attempt to differentiate between relevant and material, on the one hand, and reasonable necessity on the other. Student's view essentially reads reasonable necessity out of the governing regulation, reducing the standard to a nullity.

If the framers of the governing regulation wanted to adopt civil discovery standards, they could easily have done so. Instead, they chose to use much more restrictive language. They based the regulation on the concept of necessity, showing that, at minimum, subpoenas for records should not issue unless a party cannot make out her case without the records, or that it would be unreasonably difficult to do so.

Several of Student's document demands in the Watkins subpoena illustrate the difference between materiality and necessity. One demand seeks classroom rosters of students in the classes that Student would attend if Parents accepted San Diego's offer, with all student names redacted. Student wants these documents to "gauge class size and staff-student ratios," but does not explain why that information cannot be obtained from witnesses or other sources.

Another of Student's demands is for the scores of Lafayette Elementary School students on statewide reading tests. San Diego asserts that those scores are readily available on the web site of the California Department of Education. Student responds only by naming one test from the school year 2023-2024 that Student believes is not on that website. No source is cited for this claim, and in any event Student's response impliedly admits that all the other test results she seeks are available there.

No purpose is served in reviewing all of Student's demands because they all rely on the same faulty assumptions. Overall, Student's defense of the Watkins subpoena is not persuasive because it applies the wrong legal standard.

SAN DIEGO'S SUBPOENAS DUCES TECUM TO STEVE MAYO, SARA TIRA, CRYSTAL BEJARANO, HIGH TECH HIGH SCHOOL, AMY BRIGGS, AND THE NEWBRIDGE SCHOOL

Student argues that the records sought by San Diego's six subpoenas duces tecum are not "material" to the issues. This simply compounds the legal error discussed above.

In defense of its subpoenas, San Diego makes the same mistake. It recognizes the reasonable necessity standard, but then claims, without authority, that the reasonable necessity standard "parallels the good cause standard" of the Code of Civil Procedure. San Diego then proceeds to apply civil discovery standards to the Watkins subpoena.

Throughout their pleadings, the parties concentrate on disputing whether the six subpoenas seek documents that are material to the case. For the same reasons as expressed above, materiality is not the applicable standard. San Diego does not attempt to show that its subpoenas are defensible under the reasonable necessity standard. For that reason, its subpoenas must be quashed.

ORDER

1. San Diego's motion to quash the subpoena duces tecum served on Angelia Watkins is granted.
2. Student's motion to quash the subpoenas duces tecum served on Steve Mayo, Sara Tira, Crystal Bejarano, High Tech High School, Amy Briggs, and the NewBridge School is granted.

IT IS SO ORDERED.

Charles Marson

Charles Marson
Administrative Law Judge
Office of Administrative Hearings