BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ALPINE UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2023060498

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM

SEPTEMBER 1, 2023

On June 15, 2023 and June 27, 2023, Student filed a request for due process hearing and an amended request, respectively, naming Alpine Union School District. On July 14, 2023, an amended scheduling order was issued scheduling the case for hearing on September 6 and 7, 2023.

On August 24, 2023, Alpine issued subpoena duces tecum on Christy Himstreet, Dr. Robert Gray, Jontue Koff, and the custodian of records for Sierra School of San Diego. Each of the subpoenas provides a description of the categories of documents sought and makes a showing of reasonable necessity for production of the documents.

Each subpoena requires production of documents at the beginning of the hearing, at 9:30 AM on September 6, 2023.

On August 29, 2023, Student filed a motion to quash the subpoenas on the grounds that the subpoenas are overly broad and do not show reasonable necessity but were instead issued to seek discovery.

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.

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (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 "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. 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, 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 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

The issued subpoenas do not seek prehearing discovery. They were issued to give adequate notice for the production of documents on the first day of hearing by uploading them into CaseCenter. Only the ALJ has access to such documents until and if such documents are released to the subpoenaing party.

Student also argues that each subpoena duces tecum should be quashed because they fail 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.)

Student contends that Alpine's reasonable necessity declaration uses boilerplate, broad language, which fails to justify production. Each subpoena includes several paragraphs explaining why the requested documents are necessary and how documents, not under Alpine's control, relate to issues alleged in Student's complaint.

Alpine's declarations establish that the documents subpoenaed are material and relevant. Specifically, Alpine seeks documents forming the basis of expert opinions by

speech and language pathologist Himstreet, neurologist Gray, and occupational therapist Koff. The subpoenas also seek invoices and payment records relating to services provided to Student. Student's amended complaint puts the areas of psychoeducation, academics, speech and language, and occupational therapy at issue. Parties are entitled to questions expert witnesses at hearing regarding how they formed their opinions and conclusions, including all documents or writings upon which they relied. Accordingly, the subpoena supports a showing of reasonable necessity.

Alpine's subpoena duces tecum for Sierra School seeks documents relating to Student's enrollment, attendance, education, progress, assessment, and associated costs. Student's amended complaint seeks funding for services provided to Student by Sierra School. Accordingly, the documents requested show direct relevance to the issues and proposed resolutions being brought to hearing.

Student contends that the subpoena is overly broad as each of the subpoenas request documents for time periods not covered by Student's amended complaint. However, any documents regarding Student's treatment or assessment by Himstreet, Gray, and Koff would necessarily demonstrate progress or lack thereof over whatever time period they have provided services to Student. Student was eight years old and in second grade at the time the complaint was filed. The complaint seeks redress for alleged deficiencies since the 2021 extended school year. Given Student's limited educational experience, the overlybroad exception lacks merit. As to Sierra School, the request seeks documents related to Student's actual experience, which self-limits the scope in time.

The denial of Student's motion to quash has no impact on whether Alpine may submit such documents as evidence during the due process hearing. Each document's admissibility will be determined on a case-by-case basis.

ORDER

1. Student's motion to quash Alpine subpoenas duces tecum regarding Himstreet, Gray, Koff, and Sierra School is denied.
2. The records shall be produced to the Administrative Law Judge on the first day of the hearing in this matter by Himstreet, Gray, Koff, and Sierra School, by uploading the documents into CaseCenter in response to the request to upload documents sent through CaseCenter by OAH.
3. Counsel for Student shall immediately serve a copy of this order on Himstreet, Gray, Koff, and Sierra School.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings