BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

TWIN RIVERS UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2024040199

OAH CASE NUMBER 2024030829

ORDER GRANTING IN PART, AND DENYING IN PART, DISTRICT'S MOTION TO QUASH STUDENT'S SUBPOENA DUCES TECUM TO DISTRCT

MAY 24, 2024

On March 22, 2024, Twin Rivers Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2024030829, naming Student. On April 3, 2024, Student filed a Request for Due Process Hearing in OAH case number 2024040199, naming Twin Rivers. On April 5, 2024, OAH consolidated the two cases, designating Student's case as the primary case. The consolidated cases are presently set for hearing on May 29 and 30, 2024.

On May 2, 2024, Student issued a subpoena duces tecum to Twin Rivers. Student demanded that Twin Rivers produce on the first day of hearing a copy of any and all communications -- defined as writings, emails, text messages, and/or correspondence -- by any Twin Rivers . . . employees or representatives relating to Student held by Twin Rivers from August 12, 2023, through the present date. Student specifically requested all communications related to her Individualized Education Plan development, assessments, specialized academic instruction, speech and language services, assistive technology, educational placement, reading interventions, and extended school year.

In the accompanying Declaration of Necessity explaining why the information sought was reasonably necessary to prove Student's case, Student's attorney declared the materials being sought by Student's subpoena were not considered student records, were not previously provided by Twin Rivers in its response to Student's student records request, and could only be obtained via a subpoena. Students attorney declared Student was not seeking documents protected by the attorney client privilege, and that requested materials were reasonably necessary for Student to present evidence on the issues raised in her complaint.

On May 10, 2024, Twin Rivers filed a motion to quash Student's subpoena duces tecum on grounds the subpoena was vague, overbroad, and failed to show a reasonable necessity for the documents sought. On May 14, 2024, Student filed an opposition to Twin Rivers District's motion asserting Student's subpoena duces tecum properly limited the description of, and time frame for, the documents sought therein, and that Student gave sufficient facts to establish that the documents are reasonably necessary to present Student's case at hearing.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act, called 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, "[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 is similar to 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 applicable standard to subpoena documents in proceedings brought under the IDEA is the stricter "reasonable necessity" standard, instead of the "good cause" standard. However, both standards require a 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 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. OAH may also quash or modify a subpoena in response to a motion to quash a subpoena duces tecum.

STUDENT'S DESCRIPTION OF THE DOCUMENTS SOUGHT IS VAGUE AND OVERBROAD AND IS HEREBY MODIFIED

Twin Rivers' objections to Student's subpoena on grounds of vagueness and overbreadth are sustained in part. First, Student's general demand for "any and all communications by any Twin Rivers . . . employees or representatives relating to Student held by Twin Rivers from August 12, 2023 through the present date" is vague as to whether it seeks documents created by Twin Rivers employees, or documents held by Twin Rivers, during the stated period. This portion of Student's demand is also overbroad, because the request for "any and all communications . . relating to Student" seeks documents unrelated to the issues for hearing. As alleged in the complaint and clarified by the parties and Administrative Law Judge at the May 13, 2024 prehearing conference in this matter, Student's issues for hearing are:

1. During the 2023-2024 school year, did Twin Rivers deny Student a free appropriate public education, called a FAPE, from January 11, 2024, through the filing of Student's complaint on April 3, 2024, by:

a. Failing to make a clear written offer of FAPE with respect to the amount of time Student would be in the regular education setting versus a special day class?

b. Failing to offer Student appropriate, measurable goals in reading comprehension, written expression, math, phonemic awareness, and spelling?

c. Failing to offer Student any goals in the areas of math facts and listening comprehension?

d. Failing to offer Student appropriate specialized academic instruction in the areas of reading, written expression, and math?

e. Failing to offer Student adequate speech and language services?

f. Failing to offer Student any counseling services?

g. Failing to offer Student appropriate assistive technology devices, programs, and services?

Twin Rivers' sole issue for hearing is:

1. Does Twin Rivers' January 11, 2024, IEP offer Student a FAPE, such that the Twin Rivers can implement it without parent consent?

Student's specific requests for communications related to her individualized education plan development, assessments, specialized academic instruction, speech and language services, assistive technology, educational placement, and reading interventions are relevant to the issues for hearing, and not overbroad. Student's

request for communications related to extended school year is overbroad because extended school year is not an issue for hearing.

Twin Rivers also contends Student's subpoena is overbroad to the extent it seeks communications from the start of Student's ninth-grade, 2024-2024 school year in August 2023 that predate the January 11, 2024 IEP and later events at issue. However, information regarding Student from August through December 2023, and January 2024, was, or should have been, relevant to Student's IEP team when it developed the January 11, 2024 IEP offer, and the period covered by Student's request for communications is not overbroad.

Twin Rivers' prevailing objections to the vagueness and overbreadth of Student's subpoena duces tecum may be addressed by modifying the subpoena duces tecum to require Twin Rivers to produce by the start of the first day of hearing:

> a copy of any and all writings, emails, text messages, and/or correspondence created, sent or received by any Twin Rivers employees or representatives from August 12, 2023 through the filing of Student's complaint on April 3, 2024, relating to Student's individualized education plan development, assessments, specialized academic instruction, speech and language services, assistive technology, educational placement, or reading intervention, held by Twin Rivers, not protected by the attorney-client privilege, and not previously provided by Twin Rivers to Student in response to a request for Student's educational records, or otherwise.

STUDENT HAS SHOWN REASONABLE NECESSITY FOR THE RECORDS

Twin Rivers argues Student's subpoena duces tecum should be quashed because Student failed to make the requisite showing of reasonable necessity for the requested

documents. Twin Rivers contends that the sought are not material and relevant to the issues for hearing, because Student's issues do not include allegations directly related to communications between Twin Rivers' staff, such as an allegation that Twin Rivers' staff communicated with one another to predetermine Student's FAPE offer. However, a communication does not itself have to be the basis for a claim to be material or relevant. Student's demand for writings, emails, text messages, and/or correspondence relating to Student's individualized education plan development, assessments, specialized academic instruction, speech and language services, assistive technology, educational placement, or reading interventions clearly seeks information material and relevant to Student's and Twin Rivers' issues for hearing.

Twin Rivers also contends Student failed to identify the desired books, papers and documents sought with adequate specificity, and to clearly show that they contain competent and admissible evidence. Literal accuracy is not required in the description of books, papers, or documents in the possession of an adverse party (*Pacific Auto. Ins. Co. v. Superior Court for Santa Barbara County* (1969) 273 Cal.App.2d 61, 69 (Pacific Auto). Also, Student does not have the ability in a due process hearing to conduct prehearing discovery to identify specific relevant documents held by Twin Rivers. (Cf. *Pacific Auto*, *supra*, 273 Call App2d. at p. 70 (citations omitted)["In the absence of some additional showing of need and specificity, the county is not entitled to discovery of all of the correspondence, or all of the reports and documents gathered by the investigator. . . . However, the county is not precluded from pursuing other discovery procedures to secure the necessary information in order to make this additional showing."]) Student's request reasonably identifies communications relating to the development of Student's IEP and the issues of its alleged failure to make a clear offer of placement to Student, and to offer Student appropriate goals and related services.

Student has shown reasonable necessity for the writings, emails, text messages, and/or correspondence demanded in Student's subpoena duces tecum.

ORDER:

1. Twin Rivers City School District's motion to quash is granted in part. The vague and overly broad document description in Student's subpoena duces tecum is narrowed and modified to read:

   > Student requests a copy of any and all writings, emails, text messages, and/or correspondence created, sent or received by any Twin Rivers employees or representatives from August 12, 2023 through the filing of Student's complaint on April 3, 2024, relating to Student's individualized education plan development, assessments, specialized academic instruction, speech and language services, assistive technology, educational placement, or reading intervention, held by Twin Rivers, not protected by the attorney-client privilege, and not previously provided by Twin Rivers to Student in response to a request for Student's educational records, or otherwise.

2. Twin Rivers shall upload the documents responsive to the modified document description set forth in paragraph 1 of this Order to the applicable Case Center electronic evidence file for the Twin Rivers USD Subpoena Response by 9:30 AM on May 29, 2023, the first day of hearing in this case.

All other relief sought in Twin Rivers motion to quash Student's subpoena duces tecum is denied.



Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings