BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

AND

OJAI UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2025070206

OAH CASE NUMBER 2025070706

ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM TO NICOLE MOSHER

OCTOBER 6, 2025

On July 7, 2025, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Ojai Unified School District, in OAH case number 2025070206. On July 18, 2025, Ojai Unified filed a due process hearing request with OAH naming Student in OAH case number 2025070706. On August 18, 2025, OAH consolidated Student's and Ojai's case. On August 18 and 27, 2025, OAH granted hearing continuances based on good cause.

On, September 3 and 24, 2025, Student issued subpoenas duces tecum to Nicole Mosher, called Mosher, seeking three categories of documents: one regarding Student's

records, assessments and evaluation; and two regarding various communications including those Mosher had with Ojai staff, Parents and Student's attorney. On August 19, 2025, Ojai sent a notice to consumer to Parent advising of the subpoena directed to Mosher to produce documents on August 26, 2025, a hearing date that has since been continued. Student filed a motion to quash the
September 3, 2025 subpoena duces tecum After OAH continued the August 26, 2025 hearing, Ojai issued another subpoena duces tecum and served it on Student's attorney, Joshua Cruz, on September 24, 2025 to Mosher. The September 3, 2025 subpoena duces tecum is now moot and superseded by the September 24, 2025 subpoena duces tecum.

A party to a due process hearing under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), or 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).)

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. OAH employs the process set under the California Code of

Civil Procedure in ruling on motions to quash, as modified by special education's unique procedures and standards.

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. (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 five business days prior to the date of the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).)

Education records under the IDEA are defined by the Family Educational Rights and Privacy Act, called FERPA, to include "records, files, documents, and other materials" that "(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 300.611(b).) Pupil or education records do not include "records of instructional, supervisory, and administrative personnel . . . [ ] . . . which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

The United States Supreme Court in *Owasso Ind. School District v. Falvo* (2002) 534 U.S. 426 (*Falvo*) after conducting an analysis of FERPA provisions related to education records, determined that not every record relating to a student satisfies the FERPA definition of "education records." Specifically, the Supreme Court examined the FERPA provision that requires educational institutions to "maintain a record, kept with the education records of each student" (i.e., 20 U.S.C. § 1232g(b)(4)(A)), that "list[s] those who have requested access to a student's education records and their reasons for doing so." (*Falvo, supra,* 534 U.S. at p. 434.) The Court concluded that because this single record must be kept with the education records, "Congress contemplated that education records would be kept in one place with a single record of access." (*Id.*) The Court further concluded that "[b]y describing a 'school official' and 'his assistants' as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar…" (*Id.* at pp. 434-435.)

In *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, when determining whether or not an investigative report was an education record, citing *Falvo*, the Court of Appeal stated that "the statute was directed at institutional records maintained in the normal course of business by a single, central custodian of the school. Typical of such records would be registration forms, class schedules, grade transcripts, discipline reports, and the like." (*Id.* at pp. 751-754.) The Court of Appeal found that the investigative report, "which was not directly related to the private educational interests of the student," was not an education record, because "the report was not something regularly done in the normal course of business," and "was not the type of report regularly maintained in a central location along with education records…in separate files for each student." (*Id.* at p. 755.)

In *S.A. ex rel. L.A. v. Tulare County Office of Education* (E.D.Cal. Sept. 24, 2009, No. CV F 08–1215 LJO GSA) 2009 WL 3126322, aff'd. *S.A. v. Tulare County Office of Education* (E.D.Cal. October 6, 2009, No. CV F 08-1215 LJO GSA.) 2009 WL 3296653, the district court found that documents such as school district emails concerning or personally identifying a student that had not been placed in his permanent file were not educational records as defined under FERPA. The court, citing *Falvo*, stated that Congress contemplated that educational records be kept in one place with a single record of access to those records. Because the emails student requested had not been placed in his permanent file, and were therefore not "maintained" by the school district, the emails were not educational records and the school district was therefore not required to produce them under a request for student records under the IDEA. (2009 WL 3126322, at p. 7.)

In *Burnett v. San Mateo Foster City School District, supra,* relying on *Falvo,* the Ninth Circuit Court of Appeals affirmed the district court's determination that the school

district was not required to turn over emails that were not "maintained" in a physical folder or secure electronic data base. (739 Fed. Appx. at p. 873.) "The Supreme Court has interpreted the word 'maintain' in FERPA as 'to keep in existence or continuance; preserve; retain' and reasoned that '[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database.'" (*Ibid.*, quoting *Falvo*, 534 U.S. 426, 432-433.)

THE SEPTEMBER 24, 2025 SUBPOENA DUCES TECUM SERVED ON STUDENT'S ATTORNEY WAS UNTIMELY AND UNREASONABLE

Student argued Ojai did not comply with the California Code of Civil Procedure which required service of a consumer notice to Parents five days before serving the September 24, 2025 subpoena duces tecum to Mosher. Student argued that Ojai did not serve the consumer notice and deprived Parents the five days they otherwise had to object to Mosher's production of documents at hearing. Additionally, Student argued Ojai's late and improper service of the subpoena duces tecum on Attorney Cruz, instead of on Mosher, did not give Mosher sufficient time to produce the documents on October 7, 2025. Specifically, Student argued that after the five days to object to the subpoena duces tecum, from September 29, 2025 to October 7, 2025, Mosher would have had only eight days to produce any responsive documents.

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. OAH may modify the process set under the California Code of Civil Procedure regarding motions to quash under special education's unique procedures and standards. OAH's subpoena duces tecum form instructions suggests 15 days from the date of subpoena service to produce the documents may be reasonable.

The purpose of the notice to consumer under the California Code of Civil Procedure is to provide the consumer an opportunity to object to the documents requested under the subpoena. Here, Student's attorney had an opportunity to file a motion to quash the subpoena duces tecum issued to Mosher so Student's argument that Ojai's failure to serve the notice of consumer deprived Parent's opportunity to object to the subpoena duces tecum is unpersuasive.

However, Ojai's subpoena duces tecum was served on September 24, 2025. This late service only provided 13 days from September 24, 2025, to October 7, 2025, the date of production; and only eight days excluding the five days for consumer notice, if Ojai had served one, for Mosher to produce the documents requested. Even in the context of special education hearings, eight days for Mosher to comply with a subpoena duces tecum and produce responsive documents is unreasonable. Ojai's subpoena duces tecum to Mosher was untimely served and did not give Mosher a reasonable time to comply.

OJAI DID NOT SHOW REASONABLE NECESSITY FOR THE SUBPOENAS DUCES TECUM

Ojai did not include a declaration of reasonable necessity to support its subpoena duces tecum. Ojai did not show reasonable necessity for any category of documents sought under the subpoena duces tecum offering only conclusory statements that good cause and relevance existed for the documents sought to prosecute its case and defend Student's FAPE denial allegations. Good cause and relevance are not the standards to grant subpoenas duces tecum in special education cases. The appropriate standard for granting subpoenas duces tecum in special education cases is reasonable necessity.

Ojai did not explain who Mosher was or why Ojai needed the documents subpoenaed when Ojai's only issue for hearing was to seek OAH's permission to assess Student pursuant to the May 6, 2025 assessment plan without parental consent or conditions. Ojai stated Mosher attended Student's individualized education program, called an IEP, team meetings, made recommendations for Student's IEPs, and anticipated Student would rely on Mosher's recommendations at hearing. In special education cases, Ojai is entitled to disclosures of evidence Student would introduce at hearing five business before the first day of hearing. (See Ed. Code, § 56505, subd. (e)(7).) So, all the arguments for the documents sought to defend the case would have been required to be provided to Ojai five business days before the hearing. If Ojai subpoenas documents, it is required to show reasonable necessity, which it did not.

None of Ojai's arguments established reasonable necessity for the subpoena duces tecum. Ojai's arguments regarding relevance and good cause for the documents sought fall outside of the legislative and regulatory framework permitted in special education proceedings.

Mosher is not required to comply with the September 24, 2025 subpoena duces tecum. Student's motion to quash Mosher's subpoena duces tecum is granted in its entirety.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings