BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023110714

ORDER GRANTING MOTION TO QUASH SUBPOENA AND DENYING STUDENT'S MOTION TO MODIFY SUBPOENA

DECEMBER 13, 2023

On November 21, 2023, Parent on behalf of Student filed a Request for Due Process Hearing naming Sequoia Union High School District as respondent. OAH determined the case asserted issues requiring an expedited hearing, as well as issues not governed by the expedited hearing requirements. On November 22, 2023, a scheduling order was issued scheduling the case for expedited hearing on December 19, 2023.

On December 5, 2023, Student issued 10 subpoenas duces tecum. The subpoenas were issued to: the Custodian of Records for Atherton Police Department; David Metzger; Diego Romero; Dimitri Anrdruha; Igor Davidovich; Carlos Foster; Karl

Losekoot; Mike Amoroso; Stephen Emmi; and the Custodian of Records for Sequoia Union High School District. The 10 subpoenas sought records related to a school based disciplinary incident involving Student on April 28, 2023.

On December 7, 2023, Sequoia Union filed a motion to quash nine subpoenas on the grounds that the information sought was not relevant to the expedited due process hearing. Sequoia Union requested to quash subpoenas issued to: the Custodian of Records for Atherton Police Department; David Metzger; Diego Romero; Dimitri Anrdruha; Igor Davidovich; Karl Losekoot; Mike Amoroso; Stephen Emmi; and the Custodian of Records for Sequoia Union High School District. On December 13, 2023, Student responded, requesting that that the subpoenas be modified to order records to be produced on the first day of the non-expedited hearing on January 9, 2023.

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 (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.

DISTRICT'S MOTION TO QUASH GRANTED

Sequoia's motion to quash the subpoenas as irrelevant to the expedited portion of the case is granted. At the December 11, 2023, prehearing conference, the undersigned ruled that the expedited portion of the hearing would not consider the question of the underlying facts of the disciplinary event leading to the manifestation determination meeting. *(Danny K. v. Department of Educ*. (D. Hawai'i, Sept. 27, 2011, Civ. No. 11–00025 ACK–KSC) 2011 WL 4527387; *Patrick v. Success Acad. Charter Schs., Inc.* (E.D.N.Y. 2018) 354 F. Supp. 3d 185, 220 (quoting *Bristol Township. Sch. Dist. v. Z.B.* (E.D. Pa. Jan. 14, 2016, No. 15-CV-4604 (SRD)), 2016 WL 161600, p. 4.)

STUDENT'S REQUEST TO MODIFY SUBPOENAS DENIED

Student's request to modify the subpoenas returnable on the first day of the currently scheduled non-expedited hearing is denied.

ORDER

1. Sequoia Union's motion to quash Student's nine subpoenas to Custodian of Records for Atherton Police Department; David Metzger; Diego Romero; Dimitri Anrdruha; Igor Davidovich; Karl Losekoot; Mike Amoroso; Stephen Emmi, and Custodian of Records for Sequoia Union High School District is GRANTED and each of the subpoenas is quashed.
2. Student's request to modify the subpoenas to set response dates for January 9, 2024 is denied.
3. Nothing in this order prevents Student from reissuing subpoenas for the non-expedited due process hearing.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings