BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

SAN DIEGO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2024090140

OAH CASE NUMBER 2024060965

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM AS MOOT

SEPTEMBER 20, 2024

On June 27, 2024, San Diego Unified School District filed a Request for Due Process Hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Student as respondent. Following a request for continuance, the hearing in the case was scheduled to start on September 17, 2024.

On September 4, 2024, Student filed her own request for due process hearing. On September 5, 2024, Student filed a motion to consolidate her complaint with San Diego's complaint.

On September 10, 2024, San Diego issued subpoenas duces tecum seeking documents from Crystal Bejarano, Sara Tira, Steve Mayo, NewBridge Academy, and High Tech High School. The subpoenas duces tecum directed the witnesses to produce the documents to OAH for review by the first day of hearing, September 17, 2024. On September 11, 2024, Student filed a motion to quash these subpoenas.

The motion to consolidate the cases was granted on September 12, 2024. Student's case was established as primary for purposes of calendaring and calculating the timeline for decision. The cases were scheduled to proceed on the dates set in Student's case. The previously scheduled hearing in San Diego's case was vacated.

A party to a due process hearing under the Individuals with Disabilities 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.

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.

Student asserts a number of bases on which the subpoenas should be quashed. However, none of those will be addressed in this order as the motion to quash is moot. When the cases were consolidated, the applicable timelines for the prehearing conference and due process hearing in this matter were rescheduled to allow for the required resolution session which must precede any due process hearing requested by a Student. As no hearing is scheduled for the dates on which documents were subpoenaed, the original subpoenas are rendered moot. Accordingly, the motion to quash is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings