BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

LONG BEACH UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2022110711

OAH CASE NUMBER 2022120572

# ORDER GRANTING LONG BEACH'S MOTION TO QUASH SUBPOENA

MAY 22, 2023

On November 23, 2022, Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing, called a complaint, in OAH case number 2022110711. Student's case named Long Beach Unified School District, called Long Beach.

On December 16, 2022, Long Beach filed a complaint in OAH case number 2022120572, naming Student.

On December 23, 2022, the cases were consolidated for hearing. On April 11, 2023, the hearing in these consolidated cases was continued to May 31, 2023.

On May 15, 2023, Student issued a subpoena to produce records, sometimes called a subpoena duces tecum, on Long Beach. Student's subpoena to produce records seeks:

> [D]ocuments maintained by Long Beach from December 7, 2020 through the present date: Any and all communications, defined as writings, produced or received by employees of Long Beach which relate or refer to Student's educational program, Student's assessments, and/or the November 1, 2022 incident involving Student including, but not limited to e-mails, letters, electronic correspondence, handwritten notes, text messages, social media postings, and social media messages, with the exception of attorney-client privileged communications. Such communications may include, but are not limited to, communications by: Hugo Figueroa, Briana Castaneda, Meghann Stanford, Melissa Wolney, Catherine Lee, and Monique Griffin.

On May 16, 2023, Long Beach filed a motion to quash the subpoenas on the grounds service was improper, the request was overbroad and burdensome, and Student failed to show reasonable necessity for the production.

A party to a due process hearing under the Individuals with Disabilities Education Act, called 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 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 to produce records. 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'S COMPLAINT

Student's complaint alleges that Long Beach denied her a free appropriate public education, called a FAPE, by failing to offer appropriate services to meet Student's academic, behavioral, social emotional or mental health needs in a series of individualized education programs, or IEPs, from December 2020 through December 2022. Student also alleges a number of procedural claims, including that Long Beach impeded Parents' participation in the IEP process, failed to timely complete assessments, and failed to timely respond to Parent's November 2022 request for a mental health assessment. Student also claims she was mainstreamed without parental consent, and that Long Beach failed to respond appropriately to reports of Student being bullied from September to November 2022.

## SUFFICIENT SERVICE

Long Beach's attorney argues she was impermissibly served by email without being asked if she could accept service on behalf of its client. However, Long Beach's attorneys have consented to email service, and represent Long Beach in this matter. Thus, they can accept service of the subpoena duces tecum on Long Beach's behalf.

## SCOPE OF THE SUBPOENA

Long Beach contends the subpoena is overly broad as the subpoena requests documents form persons who were not members of Student's IEP team, and because Student does not allege that Long Beach's employees had specific knowledge of the facts. Also, the request spans two and one-half years of every communication ever made about Student, with no more than a conclusory statement that Student needs this

information to present evidence of relevant issues. And lastly, Long Beach argues the request asks it to invade employee privacy.

At the prehearing conference on May 19, 2023, Student agreed to limit the subpoena duces tecum to members of the IEP team. However, even with this limitation, Student fails to establish reasonable necessity for the documents sought, and the subpoena duces tecum is impermissibly broad.

First, by seeking "any and all" communications about Student, Student requires Long Beach to pull various documents about Student for over two years, including classroom participation, assignments, tests, grades, assessments, IEPs, meeting notes, service notes, extracurricular activities communications, and more. Most of these are readily accessible by making an educational records request.

Parents may request copies of their child's educational records at any time, and are entitled to receive those copies within five business days of their request. (Ed. Code, § 56504.) Education records under the IDEA are defined by the Federal Education Records Privacy Act, called FERPA, to include records, files, documents, and other materials containing information directly related to a student, other than directory information, which 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).) Such documents are clearly relevant to the issues in Student's complaint.

The relevance of non-educational records to Student's issues is unclear and unexplained. The non-educational documents sought are irrelevant to the timeliness of assessments, IEPs, or responses to Parent requests. Similarly, Student has not alleged that any of Long Beach's employees, let alone those on the challenged IEP teams, had

any knowledge of Student that was not shared with the IEP team. Nor has Student alleged that the IEP offers would have changed if this undisclosed knowledge was available to the IEP teams. Such a broad category of records is not, without more explanation, relevant to the very specific issues alleged in Student's complaint.

"Any and all" documents that "relate or refer" to Student's educational program, assessments or the November 2022 incident cannot be found by a simple electronic search of records using Student's name and the term "educational program." Student's IEPs had many components, which would require a search of multiple parameters that Long Beach argues could total thousands of document results. The description of the category of document is impermissibly broad.

However, the subpoena duces tecum does not require Long Beach to violate its employees' privacy, as the documents sought are clearly about Student and "maintained" by Long Beach, and the employees have no privacy right in those documents.

## OVERLY BURDENSOME

Long Beach argues the subpoena to produce records would require it to search the email, office, phone, and personal records of an untold number of Long Beach employees. It claims the breadth of Student's requests would require it or its attorneys to review thousands of pages of records for responsiveness, relevance, and confidential student information, in addition to reviewing for attorney-client privileged information and confidential work product that may be returned in the course of such records searches.

As discussed above, Student's request is overbroad, and would necessitate a search of thousands of documents. Long Beach is entitled to have each document

reviewed by its attorneys for compliance with the subpoena to produce records, and for privileged or confidential information. The subpoena to produce records served on Long Beach is overly burdensome.

## NO REASONABLE NECESSITY FOR THE RECORDS

The subpoena states that the records are:

> [R]easonably necessary for Student to present evidence related to the issues raised in her complaint, specifically to litigate the appropriateness of Long Beach's decision to exit Student from special education, and to establish the District's knowledge of Student's unique educational needs, including in mental health.

Long Beach argues the subpoena to produce records fails 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.)

The applicable standard requires a statement of reasonable necessity designating the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case. Without specifics as to why Student seeks a certain category of documents, over a specific period of time, from a specific person, Student fails to demonstrate a reasonable necessity for "any and all" documents that "relate or refer" to Student's educational program, assessments, or the November 2022 incident. Similarly, the request for any and all documents "through the present" goes beyond the time period of Student's claims, which end the date the complaint was filed in November 2022. Such documents are unnecessary for Student to

litigate the appropriateness of the IEPs challenged from December 7, 2020, through May 24, 2022, or to establish the knowledge of IEP team members at the time of those IEP team meetings. Documents created after November 23, 2022, are irrelevant to Student's issues.

The subpoena Student issued failed to comply with the requirement that it be accompanied by a declaration establishing reasonable necessity for production of the records. Here, Student made an insufficient statement of the basis for the need for the records. While section 1987.1 of the Code of Civil Procedure, provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it, as no good cause for production of the records has been established, the subpoena cannot be modified.

## ORDER

1. Long Beach's motion to quash Student's subpoena to Long Beach Unified School District is granted.
2. The subpoena to produce records to Long Beach Unified School District is hereby quashed.

*Alexa Hohensee*

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings