BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120403

ORDER GRANTING MOTION TO QUASH SUBPOENAS DUCES TECUM

MAY 20, 2020

On December 10, 2019, Student filed a request for due process naming Chino Valley Unified School District, referred to as Chino Valley. On January 23, 2020, Student filed a motion to amend and an amended due process complaint. On January 26, 2020, the Office of Administrative Hearings, referred to as OAH, issued an Order granting Student leave to file the amended complaint. On March 16, 2020, OAH issued an Order Following Prehearing Conference Granting Request for Continuance and scheduled this matter for hearing on May 27 through 28, 2020.

On May 12, 2020, Chino Valley accepted service of eighteen subpoenas for personal appearance and subpoenas duces tecum issued by Student. The subpoenas

were issued to the following individuals: Onyema Anyanwu, general education teacher; Maureen Bromley, general education teacher; Lina Chen, occupational therapist; Gloria Daniels Valdez, former program specialist; Stephanie Diaz, general education teacher; Irene Dominguez, information technology technician; Todd Finkbiner, principal at Canyon Hills Junior High; Deborah Gutierrez, information technology technician; Anne Ingulsrud, director of special education; Jeannelle Jesson, school psychologist; Kristin Knight, special education teacher; Satish Krishnappa, speech language pathologist; Camille Moet, substitute teacher; Lloyd Rekstad, West End SELPA program specialist; Steven Saito, special education teacher; Erin Sharp, special education teacher; Karin Summerford, special education teacher; and Kelsey Wilcox, school psychologist

On May 18, 2020, Chino Valley Unified School District filed a Motion to Quash the subpoenas duces tecum on the grounds that: (1) Student failed to establish reasonable necessity for the requested documents; (2) the documents sought are irrelevant to the issues for hearing; (3) the requests for documents are overbroad and vague, and (4) Student failed to provide a reasonable time for Chino Valley Unified School District and West End SELPA to comply with the document requests.

On May 18, 2020, the Prehearing Conference by Videoconference was held in this matter. Student was ordered at the Prehearing Conference to file its opposition to Chino Valley's Motion to Quash with OAH no later than 12:00 PM on May 19, 2020. No opposition was filed by Student.

APPLICABLE LAW

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 documents or papers) 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, 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. The standard for issuance of a subpoena duces tecum in a special education due process proceeding is "reasonable necessity" (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2)), requiring a specific showing that the requested

documents are reasonably necessary for the requesting party to present a case at hearing. Here, Chino Valley's Motion to Quash pertains only to the production of documents pursuant to the subpoenas duces tecum, and not to the subpoenas for personal appearance at the hearing. Accordingly, this Order only addresses Chino Valley's Motion to Quash the subpoenas duces tecum.

INSUFFICIENT NOTICE TO COMPLY

California Code of Civil Procedure section 1985.3, subdivision (d), states that service of a subpoena duces tecum must be made "in sufficient time to allow the witness reasonable time to locate and produce the records or copies thereof." Code of Civil Procedure section 2020.410, subdivision (c) defines sufficient time as "no earlier than 20 days of the issuance, or 15 days after the service" of the subpoena, whichever is later. The subpoenas duces tecum were issued on May 12, 2020, and served on counsel for Chino Valley that same day. The subpoenas duces tecum demanded production of documents at the start of the hearing on May 27, 2020, which date is less than 20 days of issuance; the later of the two dates. Therefore, Student failed to provide the witnesses sufficient time to produce documents as directed by the subpoenas duces tecum, and for this reason an Order Quashing Student's subpoenas duces tecum is warranted.

REASONABLE NECESSITY FOR THE RECORDS

Student's complaint alleges that Chino Valley failed to offer Student a free appropriate public education for the 2017-2018, 2018-2019, and 2019-2020 school years by, among other things, failing to evaluate Student in all areas of suspected disability, failing to present accurate levels of performance and measurable goals, and failing to provide appropriate placement, supports and services.

Student's 18 subpoenas duces tecum generally seek production of a wide-range of documents from various employees of Chino Valley and West End SELPA, the special education local plan area of which Chino Valley is a member. The requested documents include written notes and communications relating to Student, witness training on assessments provided to Student and all notes, assessments, tests, school work, progress reports and grades for Student, and communications between the witnesses and representative of China Valley or its attorney.

The subpoena duces tecum issued to Erin Sharp, special education teacher, further requests services logs for any services provided to Student. The subpoenas duces tecum issued to Ms. Chen, Ms. Dominguez, Ms. Gutierrez, Ms. Jesson, Ms. Knight, Ms. Krishnappa, Ms. Moet, Mr. Saito, Ms. Summerford and Ms. Wilcox request service logs, as well as the original protocols for all assessments conducted of Student in March 2018.

Student's declarations in support of the18 subpoenas contain conclusory statements describing the reasonable necessity for the requested documents. The declarations state, for example, that the documents are necessary to show the appropriateness of Student's individualized education program, witness credibility and impeachment evidence. Student fails to specify the exact matters or things desired to be produced or set forth in full detail the materiality of these documents to the issues involved the case. Student further neglects to clarify that the witnesses have the desired documents in their possession or control, nor to explain why these documents are required for Student to present its case at hearing. Further, some of the subpoenas are issued to witnesses not identified on Student's witness list submitted for the Prehearing Conference, specifically, Onyema Anyanwu, Stephanie Diaz, Irene Dominguez and

Deborah Gutierrez, which undercuts the reasonably necessity of needing documents from these witnesses.

Student's declarations also state that the documents are relevant to program and service availability and communications between service providers and Parents. While generally this information is relevant, the declarations supporting the subpoenas fail to specify why the information is relevant and material to the specific issues in the case, or to explain why these documents are necessary for Student to present its case. Accordingly, Student failed to meet its burden of establishing reasonable necessity for production of the records. (*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.)

SCOPE OF THE SUBPOENAS

Student's complaint asserts that Chino Valley Unified School District failed to provide Student a free appropriate public education for the 2017-2018 2018-2019 and 2019-2020 school years. The subpoenas duces tecum are not limited to these school years, and for this reason are overbroad. For this additional reason, an Order quashing the subpoenas duces tecum is warranted.

ORDER

1. Chino Valley Unified School District's Motion to Quash Student's subpoenas duces tecum to Onyema Anyanwu, Maureen Bromley, Lina Chen, Gloria Daniels Valdez, Stephanie Diaz, Irene Dominguez, Todd Finkbiner, Deborah Gutierrez, Anne Ingulsrud, Jeannelle Jesson, Kristin Knight, Satish Krishnappa, Camille Moet, Lloyd Rekstad, Steven Saito, Erin Sharp, Karin Summerford, and Kelsey Wilcox is granted.

2. The subpoenas duces tecum for records to each of the foregoing individuals is hereby quashed.
3. This Order does not apply to the subpoenas for personal appearance directed to the above-witnesses.

IT IS SO ORDERED.

DocuSigned by:
Jennifer Kelly
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Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings