BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2020040549

and

CAPISTRANO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020050730

ORDER DENYING MOTION TO QUASH SUBPOENA

JULY 20, 2020

On April 16, 2020, Student filed a request for due process naming Capistrano Unified School District. On May 22, 2020, Capistrano filed a request for due process naming Student. On May 27, 2020, the Office of Administrative Hearings, referred to as OAH, consolidated Capistrano's case with Students. On June 3, 2020, OAH granted the parties' request for a continuance and scheduled the case for hearing on July 28, 29, and 30, 2020.

On July 6, 2020, Capistrano sent a notice to consumer to Student's attorney advising Student that it intended to issue two subpoenas duces tecum, one to Futures Academy and the other to Doctor Marta Shinn. Capistrano sought any and all Student records from Futures Academy from August 2019 to the present. Capistrano sought any and all records from Dr. Shinn regarding the independent educational evaluation of Student Dr. Shinn conducted. Both subpoenas directed Futures and Dr. Shinn to produce the records by mailing them along with a declaration to OAH five business days prior to the due process hearing.

On July 14, 2020, Student filed a motion to quash the subpoenas on the grounds that they were exceptionally overbroad, sought documents not relevant to the issue at hand, and were not reasonably necessary. On July 16, 2020, Capistrano filed an opposition to the motion to quash.

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.

REASONABLE NECESSITY FOR THE RECORDS

Student argues that the subpoenas duces tecum should be quashed because they fail 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.)

Capistrano's declaration in support of the subpoena duces tecum for Futures Academy states the documents are material to the issues in dispute and are reasonably necessary for Capistrano defend against Student's request for due process. Student contends the requested documents are overly broad and duplicative. Specifically, Student contends the documents are not relevant because Student is requesting reimbursement for Futures Academy as a unilateral placement. Student argues the requested documents are beyond the scope of determining the appropriateness of Futures Academy for purposes of reimbursement. Additionally, Student argues the requested billing documents are duplicative as it is Student's burden to prove expenses for reimbursement. Finally, Student argues production of any and all documents is not limited to the issues at hand but may include documents not related to the present matter.

Capistrano's declaration establishes that the documents subpoenaed are material and relevant. Parents disagreed with Capistrano's offer of a free appropriate public education and privately placed Student at Futures Academy. Capistrano seeks documents related to Student's enrollment, therapy records, behavior data, discipline, progress on goals, report cards, assessment protocols, assessment reports, and communications with Parents and their attorney. Student's argument that the documents are not relevant because Student seeks reimbursement not prospective

placement is not persuasive. Student's educational records from Futures are relevant as Student seeks funding for future placement at Futures Academy. Additionally, Student's argument that the billing records are duplicative is also not persuasive. Student requests reimbursement as a remedy. Although it is Student's burden to provide evidence of the expenses, Student may or may not include all billing information in the exhibits. Capistrano's request is limited to the time period in question and established a need for the documents.

Capistrano's declaration in support of the subpoena duces tecum for Dr. Shinn states the documents are material to the issues in dispute and are reasonably necessary for Capistrano defend against Student's request for due process. Student contends the requested documents are overly broad and duplicative. Specifically, Student contends the documents from Dr. Shinn generated after March 2020 are not relevant because Dr. Shinn conducted an independent educational evaluation and presented the findings to the individualized education program team meeting in March 2020. Student argues any documents Dr. Shinn generated after March 2020 are not relevant to the independent educational evaluation. Student further argues the requested billing documents are duplicative as it is Student's burden to prove expenses for reimbursement and Student already provided Dr. Shinn's invoice to Capistrano.

Capistrano's declaration establishes that the documents subpoenaed are material and relevant. Capistrano seeks any and all documents from Dr. Shinn from August 2019 to the present that were prepared, referenced, reviewed, or considered in conducting Student's independent educational evaluation. To the extent Dr. Shinn has records for Student after March 2020 that are not related to the independent educational evaluation those records are not included in Capistrano's subpoena. Any records related to the independent educational evaluation, regardless of when they were

prepared between August 2019 and the present, are relevant to the issues at hand. Student's argument that the billing records are duplicative is again not persuasive. Student requests reimbursement as a remedy. Although it is Student's burden to provide evidence of the expenses, Student may or may not include all billing information in the exhibits. Capistrano's request is limited to the time period in question and established a need for the documents.

ORDER

1. Student's motion to quash Capistrano's subpoenas duces tecum to Futures Academy and Dr. Shinn is denied. The records shall be produced in accordance with the instructions accompanying the subpoena duces tecum.
2. Counsel for Capistrano shall immediately serve a copy of this order on Futures Academy and Dr. Shinn.

DocuSigned by:
Linda Johnson
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Linda Johnson

Administrative Law Judge

Office of Administrative Hearings