BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025101198

ORDER GRANTING STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM

MARCH 18, 2026

On October 30, 2026, Student filed a request for due process with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District, alleging Student was denied a free appropriate education, called FAPE, during the 2025-2026 school year. Student asserts District failed to both offer an appropriate individualized education program, or IEP, regarding placement and in the areas of specialized academic instruction, one-to-one support, and behavior, and failed to properly implement the offers it made in those areas. Student also alleges District failed to collect appropriate behavioral data for a period he was in general education, and predetermined its October 17, 2025 offer of FAPE.

The hearing was scheduled to begin on March 24, 2026, but at the March 17, 2026 prehearing conference the Administrative Law Judge, called ALJ, continued the hearing to April 14 through 16, 2026.

On March 4, 2026, District issued a subpoena duces tecum directed to the Custodian of Records for ACCESS Behavior Solutions and Crystal Ruse. By the subpoena, District sought production on March 24, 2026, of eleven categories of documents regarding Student and his Parents, including assessments, assessment protocols, special education records, progress reports and behavior logs, interview and observation notes, transcripts, correspondence, report cards, intake forms, and billing records.

District's subpoena states that the requested documents are required for it to defend itself in this case and that it anticipates that Student will call Ruse to testify about her assessment of Student. District states that it requires correspondence between staff at ACCESS and Parents, Student's counsel, and Barbara Major so that it can cross-examine Ruse regarding the records she reviewed as part of her assessment, interviews, observations, assessments recommendations, and potential bias.

On March 5, 2026, Student filed a motion to quash the subpoena on the grounds that District failed to establish reasonable necessity. Student argues that District's subpoena only sets forth a generalized assertion that the records are necessary for it to defend itself and cross examine witnesses and fails to contain any individualized explanation as to what each category of records is necessary to litigate the issues in this matter. Student also argues that the communications between ACCESS staff and Student's lawyers are protected by the attorney-client privilege and work product doctrine. Student claims that although District is entitled to cross-examine Ruse regarding her opinions, it may not obtain communications between her and Student's

lawyers regarding litigation preparation. Finally, Student contends that the subpoena is overbroad and that the requests amount to a fishing expedition. Student asserts that District does not explain how the evaluator's financial records are relevant to this case or how intake forms would assist District in presenting its case.

On March 11, 2026, District filed an opposition to the motion to quash. District argues that the attachment to the subpoena establishes reasonable necessity and that the records it seeks can only be obtained through subpoena. It argues the motion should be denied because Student did not attach a copy of the subpoena to the motion. District argues that because Student's complaint repeatedly cites to Ruse's evaluation recommendations and anticipates Student will rely upon Ruse at hearing, it needs the requested documents to defend itself at hearing. It claims it needs the correspondence requested to cross-examine Ruse regarding the records she reviewed and her potential bias. It contends it requires the assessment protocols and other documents because of the allegations in the complaint regarding Ruse's observations. It also claims that it requires the notes, correspondence, intake documents, and billing records because Student asserts that the behavior intervention plan was not implemented and the aides failed to properly support Student. District argues the records sought are not privileged because it does not seek communications between a lawyer and a client, and Student failed to make the necessary showing that the records contain work product or cite applicable authority, waiving any claim of privilege. District also requests an *in camera* inspection to the extent OAH determines any privilege may apply. District contends that the subpoena is reasonably narrow and particularized, such that the motion should be denied.

REASONABLE NECESSITY FOR THE RECORDS

The Individuals with Disabilities Education Act, called the IDEA, provides parties with the right to present evidence and compel the attendance of witnesses at "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).)

In general, there is no right to prehearing discovery in due process proceedings. Rather, the law accords prehearing access to two types of documents: (i) parents have the right to request and receive the pupil's educational records within five business days at any time, and (ii) the parties are entitled to receive copies of all the documents the other party intends to use at hearing, not less than five business days prior to the hearing. (Ed. Code, §§ 56504 & 56505, subd. (e)(7).)

A subpoena duces tecum seeking production of documents on the day the hearing commences may be appropriate if the requisite showing of "reasonable necessity" is adequately made in a declaration supporting the subpoena and assuming no other legal bar to production exists. In ruling on motions to quash, 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 issuing protective orders.

Here, the declaration attached to District's subpoena fails to adequately demonstrate that all the requested the documents are "reasonably necessary" for District to present its case at hearing. While the ALJ can conceive of reasons why some of the documents might be reasonably necessary to District's defense, District has failed to make the obligatory showing of reasonable necessity within the subpoena or the exhibit supporting it for each document sought.

As an initial matter, the period the subpoena covers is unclear. At first glance, it appears to cover the period from August 1, 2025 through March 24, 2026, but the two sentences following that statement make it unclear what period the subpoena covers. One of those sentences to justify the time period is illogical, and the next sentence inconsistently appears to seek records from before August 14, 2024. In any event, District has failed to clearly state the period covered or otherwise specifically and comprehensively explain within the four corners of the subpoena or the supporting exhibit a justification based on reasonably necessity for the entire period in which documents are requested.

District has otherwise failed to make the necessary showing of reasonable necessity in the exhibit attached to the subpoena. The exhibit does not contain proper specificity explaining how each of the documents sought are necessary to the defense regarding one or more issues in this case. Reciting the litany of Student's allegations, claiming Student will rely on Ruse at hearing, and merely asserting that the documents are necessary to District's defense is too vague and conclusory, without any accompanying explanation *how* each of particular documents sought are reasonably necessary for District to present its defense. In only one place, at the very end of the supporting exhibit to the subpoena does District specifically address any particular category of documents. – namely, the correspondence between ACCESS staff on the one

hand, and Parents, Student's attorneys and Barbara Major, on the other hand. However, even as to this category, District's explanation falls short of establishing reasonable necessity. For example, not only does District fail to explain who Barbara Major is, but it fails to explain *why* it requires each and every piece of correspondence sought to cross-examine Ruse regarding the records she reviewed or *how* such documents might demonstrate her potential bias.

CLAIMS OF PRIVILEGE

As to Student's objections to the requested communications based on attorney-client and work product privileges, his arguments are unpersuasive. Student has failed to establish that ACCESS or Ruse are clients of Student's attorney, or that the protections of Evidence Code sections 952 and 954 would otherwise apply. On the contrary, in Student's prehearing conference statement, Ruse has been listed as an expert witness who will be testifying at the hearing which appears to render the attorney-client privilege inapplicable. (See, *Shadow Traffic Network v. Superior Court* (1994) 24 Cal.App.4th 1067, 1079 [The attorney client privilege is lost upon designation of the expert as a witness because the decision to use the expert as a witness manifests the client's consent to disclosure of any confidential information communicated by the client or through his lawyer.].)

The only other authority Student cited is *Coito v. Superior Court* (2012) 54 Cal.4th 480 (*Coito*). It is unclear what part of *Coito* Student is relying upon as he lists no jump cite. *Coito* addressed the work product privilege pertaining to the recordings of witness interviews conducted by investigators employed by defendant's counsel and the identity of witnesses from whom defendant's counsel obtained statements. *Coito* did not address communications with an outside expert identified as a trial witness, which is the issue here regarding Ruse. However, *Coito* requires an attorney resisting disclosure

based on a work product objection to make a preliminary or foundational showing the disclosure would reveal the attorney's impressions, conclusions, opinions, or legal research or theories (54 Cal.4th at. p. 495), which Student's counsel has failed to do.

Indeed, Student's opposition fails to properly address the abundance of authority establishing that once an expert has been designated as a witness, that any communications the expert might have had with the attorneys, clients, other retained experts are discoverable. (See, e.g., *DeLuca v. State Fish Co.* (2013) 217 Cal.App.4th 671, 689-690 (*DeLuca*); *Shadow Traffic Network v. Superior Court, supra,* 24 Cal.App.4th at p. 1079; *Swartzman v. Superior Court* (1964) 231 Cal.App.2d 195, 203 [When it becomes reasonably certain an expert will give his professional opinion as a witness on a material matter in dispute, then his opinion has become a factor in the cause. At that point the expert has ceased to be merely a consultant and has become a counter in the litigation, one to be evaluated along with others. Such evaluation properly includes discovery.] An expert may be cross-examined on any matter upon which his or her opinion is based and the reasons for his or her opinion. (Evid. Code, § 721, subd. (a).) This would appear to include communications with the attorney, rendering those communications discoverable.

As addressed in *DeLuca,* the application of work product protection becomes more complex when the expert is both a consulting and a testifying expert. An expert's opinion regarding the subject matter about which the expert is a prospective witness is discoverable, but the expert's advice rendered to the attorney in an advisory capacity is still subject to conditional work product protection. (*DeLuca*, *supra*, 217 Cal.App.4th at p. 690.) The court in *National Steel Products Co. v. Superior Court* (1985) 164 Cal.App.4th 476, 488-490 (*National Steel*) set forth a three part test to evaluate the applicability of the work product doctrine, including an *in camera* review, to determine

which documents are absolutely privileged, which are subject to a qualified privilege, and whether any qualifiedly privileged documents are nonetheless subject to disclosure based on balancing good cause for discovery against the principles of the work product doctrine.

Here, notwithstanding the fact that Student's counsel failed to make a prima facie showing required by *Coito*, District has not made the necessary factual showing under the third part prong of *National Steel* with regard to all of the correspondence sought, much less that all the correspondence sought is reasonably necessary – the standard applied for subpoenas in special education due process hearings. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

FINANCIAL RECORDS

Finally, Student's objection to disclosure of the evaluator's financial records is sustained because District did not explain in the subpoena or its supporting affidavit or attached exhibit *how* the billing records are reasonably necessary to District's defense. The ALJ is mindful that Evidence Code section 722 provides that compensation and expenses paid or to be paid to an expert witness by the party calling him is a proper subject of inquiry by any adverse party as relevant to the credibility of the witness and the weight of his testimony. However, District's subpoena must nonetheless make a factual showing of reasonable necessity in the affidavit supporting the subpoena, *i.e.*, explain how the requested records are necessary for the presentation of their case or to cross-examine a witness. District's affidavit does not contain this information.

CONCLUSION

Student's motion to quash is granted in its entirety. As drafted, District's subpoena duces tecum and the exhibit to the affidavit supporting it are inadequate.

Nothing in this order precludes District from serving a new subpoena duces tecum and supporting affidavit on ACCESS or Ruse, drafted in conformity with this order, including but not limited to, making the required factual showing in the subpoena affidavit as to why each and every document requested is reasonably necessary for District to defend itself. District is forewarned that the ALJ is not inclined to modify any defective subpoena, including any subpoena that is overbroad, or lacks the requisite justification for each document requested, or because District attempted to use the special education subpoena procedure as a tool to conduct a fishing expedition, as opposed to a means to obtain documents which District legitimately requires to defend itself through a carefully prepared and narrowly focused subpoena.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings