BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050784

CORRECTED ORDER DENYING STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM

SEPTEMBER 26, 2024

This Order corrects a scrivener's error in the Order Denying Student's Motion to Quash Subpoena Duces Tecum issued on September 24, 2024.

On May 17, 2024, Parents on behalf of Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Capistrano Unified School District, called Capistrano. On June 20, 2024, OAH issued an order granting a continuance in this matter and scheduled the case for hearing on October 8 through 10, 2024.

On September 16, 2025, Capistrano issued a subpoena duces tecum to The Prentice School. On September 9, 2024, Capistrano sent a notice to Student advising

Student of the subpoena directed to The Prentice School. A copy of the subpoena was sent to Student with the notice to consumer.

On September 23, 2024, Student filed a motion to quash the subpoena duces tecum on the grounds Capistrano did not make the requisite showing of reasonable necessity for the documents requested and the subpoena was overbroad and duplicative. On September 23, 2024, Capistrano opposed the motion arguing the subpoena requested documents are relevant to the issues in the case and necessary to defend itself against Student's claims and proposed remedies. Capistrano further argues Student lacks standing to object to the subpoena on the grounds it is overly burdensome.

SUBPOENA DUCES TECUM

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.

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. A student or other person whose personal records are sought by a subpoena duces tecum and who is a party to the proceeding in which the subpoena duces tecum is served may, prior to the date for production, bring a motion to quash or modify the subpoena duces tecum. (Code Civ. Proc., § 1985.3, subd. (g).)

REASONABLE NECESSITY FOR THE RECORDS

Student argues the subpoena duces tecum should be quashed because it 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. Student's complaint alleges Capistrano denied Student a free appropriate public education by failing to make an appropriate offer of goals, services, and placement in individualized education programs developed between May 2022 and January 2024. The complaint alleges Parents privately placed Student at The Prentice School in or around January 2024. As a remedy, Student seeks reimbursement for educational expenses and costs

incurred by Parents, including assessments, services, and placement at a non-public school.

Capistrano's declaration of necessity and description of the documents to be produced showed good cause for production of documents described in the subpoena duces tecum, specifying the exact matters or things desired to be produced, and setting forth in full detail the materiality thereof to the issues involved in the case. Capistrano requested:

- Any and all records related to [Student] in the possession of, utilized and/or generated by The Prentice School and its employees from August 1, 2023, to the present, including but not limited to educational records, enrollment/intake/application paperwork, therapy records, behavior data, discipline records/entries, progress on goals, report cards, assessment protocols, and assessment reports completed by The Prentice School and its staff, including internal and external communications (including emails, letters, phone logs, communication logs, contracts, individual service agreements, invoices and/or billing, and proof of payment) regarding Student's educational needs and/or educational progress and attendance, as between The Prentice School and/or with Student's parents and their attorneys.
- The records requested are material to the issues in dispute and are reasonably necessary for the District to defend against Student's Request for Due Process Complaint and proposed remedies therein. Student's Complaint alleges that the District denied Student a FAPE and that Parent therefore chose to privately enroll Student at The Prentice School in or around January 2024. Student's Complaint requests reimbursement for all

educational expenses and costs incurred by Parents including but not limited to assessments, services, and private school placement.

- The District's ability to respond to Student's requested remedies requires information about what The Prentice School has provided to Student, which goals or areas of need The Prentice School addressed over time and how those needs have changed, and Student's educational performance and progress at The Prentice School. These records, and any other records that The Prentice School has in its possession regarding Student from August 1, 2023 to the present, are necessary to effectuate effective cross-examination of Parent and any The Prentice School staff that may testify.

The categories of documents Capistrano requested were appropriate to address the issues raised by Student's complaint, and not overbroad. Capistrano did not specifically request any irrelevant medical records or financial documents. If The Prentice School were to produce irrelevant medical records not related to Student's education, or private financial information such as credit reports, bank statements, and credit card information, those documents could be excluded, redacted, or made subject to a protective order at the hearing, following the in-camera review by the Administrative Law Judge of the documents uploaded by The Prentice School into Case Center, discussion with the parties, and, if appropriate, formal motions made at hearing.

SCOPE OF THE SUBPOENA

Student contends the subpoena is overly broad because it does not specify a specific date or title of requested records. Student further argues the records sought are duplicative because Parents signed a release of information allowing Capistrano to obtain records from The Prentice School.

Capistrano's requests are tailored to the specific time-period at issue in Student's complaint starting in August 2023 and continuing through the present. Capistrano seeks production of categories of documents related to Student's educational programming at The Prentice School, including goals, services, placement, and Student's educational progress. Production of documents in response to a subpoena duces tecum does not mean all such documents are admissible at hearing. Rulings on relevance and admissibility are made contextually by the Administrative Law Judge at the due process hearing.

Student's argument it is required to produce evidence it intends to use at the due process hearing five business days prior to the due process hearing as required by Education Code section 56500, et seq., and therefore the requested documents are duplicative, is unpersuasive. Student cites to no legal authority in support of this argument. Nor does it have custody or control over The Prentice School's documents related to Student, standing to produce documents on behalf of The Prentice School, or authority to determine which documents should be produced. Accordingly, Student's motion to quash the subpoena duces tecum is denied.

ORDER

1. Student's motion to quash Capistrano's subpoena duces tecum to The Prentice School is denied. The records shall be produced by The Prentice School no later than the first day of hearing in this matter. OAH will send a link to upload subpoenaed documents into Case Center. If the hearing date is continued, the date of production shall be the first day of the continued hearing.
2. Counsel for Capistrano shall immediately serve a copy of this Order on The Prentice School.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings