BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

ROCKLIN UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2022060868

OAH CASE NUMBER 2022070254

ORDER DENYING MOTION TO QUASH SUBPOENA

SEPTEMBER 21, 2022

On June 23, 2022, Student filed a request for due process hearing, or complaint, with the Office of Administrative Hearings, called OAH, naming Rocklin Unified School District. On July 11, 2022, Rocklin filed a complaint naming Student. On July 22, 2022, OAH issued an order consolidating the matters and continuing hearing dates to September 27, 28 and 29, 2022.

On August 31, 2022, Student issued a subpoena duces tecum on Rocklin. The subpoena to Rocklin sought production, at the time of hearing, of communications, defined as writings, emails, and/or correspondence, by any Rocklin employee relating to Student and held by Rocklin between August 1, 2020 through the time of issuance of

the subpoena. The subpoena requested documents specifically relating to the development of Student's individualized education programs, called IEPs, COVID-19, placement, services, assessments, distance learning, home instruction, enrollment, attendance, extended school year services, progress reports, and service logs.

On September 13, 2022, Rocklin filed a motion to quash the subpoena on the grounds that Student failed to show reasonable necessity for the documents, that the request is vague and overly broad constituting a fishing expedition. On September 16, 2022, Student opposed the motion arguing the request sought documents related to Student, not obtainable through educational records requests, and reasonably necessary for Student to present evidence on the issues raised in her complaint.

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

Rocklin argues that 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. (*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.)

Student's declaration in support of the subpoena states that she seeks writings, emails, and correspondence covering the time-period placed at issue in her complaint. She seeks production of categories of documents both related to her, specifically, and tailored to the issues identified for hearing in the order following prehearing conference.

For example, Student's subpoena seeks documents related to her placement, services, assessments, and distance learning while issues for hearing include Student's placement, the continuum of placement options, and the appropriateness of services such as specialized academic instruction, speech and language, and occupational therapy. Student's subpoena seeks services logs, while issues for hearing include failing to implement her IEP. Student's subpoena seeks communications regarding development of her IEPs, while issues for hearing include predetermination, unilateral changes in placement and failure to offer certain placements.

Rocklin argues that the request for COVID-19 documents is overly broad in that many policies regarding COVID-19 exist, pertain to all students, and are available on their website. However, Student's requests are tailored to the specific time-period at issue in her complaint, to Student herself, and to Student's educational programming.

Production of documents in response to a subpoena duces tecum does not mean all such documents are automatically admitted into evidence. Rulings on relevance and admissibility are made contextually by the hearing ALJ. Accordingly, Rocklin's motion to quash is denied.

ORDER

1. Rocklin's motion to quash Student's subpoena to Rocklin is denied. The records shall be produced by Rocklin no later than the first day of hearing in this matter. OAH will send a link to upload subpoenaed documents into Case Center.
2. Counsel for Rocklin shall immediately serve a copy of this order on Rocklin and on the school sites from which documents would be found as well.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings