BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALM SPRINGS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025060210

ORDER GRANTING MOTION TO QUASH IN PART AS STUDENT'S SUBPOENAS DUCES TECUM ISSUED JULY 31, 2025 AND AUGUST 4, 2025

AUGUST 18, 2025

On June 5, 2025, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Plam Springs Unified School District as respondent. On July 1, 2025, OAH granted a continuance in the case, scheduling the hearing to begin on August 12, 2025.

On July 31, 2025 and August 4, 2025, Student issued subpoenas *duces tecum* to Jodi Curtis of Palm Springs Unified School District. On August 8, 2025, Palm Springs, filed a motion to quash the subpoenas on the grounds that no notice to consumer was served; the requests were untimely; and the July 31, 2025 subpoena was overbroad. On

August 11, 2025, Student opposed the motion to quash asserting that a notice to consumer was not required in these circumstances; the subpoenas were timely in light of Student's prior document requests; and the requests were targeted and necessary.

DISPUTED ITEMS SUBJECT TO SUBPOENA NARROWED BY THE PARTIES

A ruling was not made on the motion prior to the beginning of the hearing on August 12, 2025. The parties agreed to engage in further discussions to narrow the disputes regarding Student's requested documents. Student's original July 31, 2025 subpoena for documents included a long list of varied items. The August 4, 2025 subpoena involved a request for four assessment examiner manuals.

The parties are commended for working together to significantly narrow the list of items in dispute.

Following the parties' discussions, the undersigned was informed that the only documents still in dispute were Student's requests for:

1. All Student work samples for the 2023-2024 and 2024-2025 school years;
2. All gradebooks, grade reports, or teacher-maintained records showing Student's grades in each subject for the 2023–2024 and 2024–2025 school years, including but not limited to scores for quizzes, tests, assignments, and homework;
3. Dates of each progress report, report card, and semester reports for the 2023-2024 and 2024-2025 school year;
4. KTEA-3 Administration and Scoring Manual (Kaufman Test of Educational Achievement, Third Edition)
5. WRAVMA Administration and Scoring Manual (Wide Range Assessment of Visual Motor Abilities)

6. DTVP-3 Examiner's Manual (Developmental Test of Visual Perception, Third Edition)
7. BOT-2 Examiner's Manual (Bruininks-Oseretsky Test of Motor Proficiency, Second Edition)

NO PREHEARING DISCOVERY IN SPECIAL EDUCATION CASES

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act, or IDEA. (20 U.S.C. § 1400 et seq.) Rather, 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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery. The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).) While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings.

The IDEA and California special education law provides that parents or adult students are entitled to request copies of the educational records relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District*, (9th Cir. 2018) 739 Fed. Appx. 870, 873.)

An "education record" under IDEA is defined by the regulations implementing the Family Educational Rights and Privacy Act ("FERPA"). 34 C.F.R. § 300.611(b). Under FERPA, an education record includes records, files, and documents that "(i) contain

information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). The Supreme Court has interpreted the word "maintained" in FERPA as "to keep in existence or continuance; preserve; retain" and reasoned that "[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database." (*Owasso Indep. Sch. Dist. No I-011 v. Falvo* (2002) 534 U.S. 426, 432-33, 122 S.Ct. 934, 151 L.Ed.2d 896.)

SUBPOENAS DUCES TECUM IN SPECIAL EDUCATION CASES

In special education proceedings in California, the ALJ has the right to issue Subpoenas ordering witnesses to appear and give testimony. ALJs also have the right to issue Subpoenas Duces Tecum to produce documents upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

Special education law does not specifically address motions to quash 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.

FAILURE TO SERVE CONSUMER NOTICE INAPPLICABLE

Palm Springs' argument that Student failed to serve a notice to consumer regarding documents pertaining to himself lacks legal support. The purpose of California Code of Civil Procedure's notice to consumer is to give a consumer notice of records being sought about the consumer and an opportunity to object to the records' production. (Code Civ. Proc. § 1985.3.) The governing code section does not require

any person seeking records pertaining to themselves to serve themself a consumer records notice. The civil procedure code specifically states, "If the subpoenaing party is the consumer, and the consumer is the only subject of the subpoenaed records, notice to the consumer, and delivery of the other documents specified in subdivision (b) to the consumer, is not required under this section."

JULY 31, 2025 SUBPOENA FOR VARIOUS RECORDS

The July 31, 2025 subpoena sought a broad array of documents including emails spanning eighteen months among six categories of employees, with the individuals in each category being unnamed; a list of 16 subcategories of documents related to assessments, work samples and classroom assessment reports; and records related to 504 meetings. The July 31, 2025 subpoena gave Palm Springs eight business days to compile and upload the documents prior to hearing. This was an inadequate amount of time to respond. The subpoena duces tecum will be modified.

Student counsel's declaration is deemed attached to the Statement of Necessity, which is signed under oath. In the future, Student's counsel is instructed to either reference a separate declaration statement in the document signed under oath, so there is no question that the separate declaration is sworn; or to include a signed and dated oath on the separate document.

Following the parties' narrowing of the contested items, the following documents remain in dispute:

1. All Student work samples for the 2023-2024 and 2024-2025 school years;
2. All gradebooks, grade reports, or teacher-maintained records showing Student's grades in each subject for the 2023–2024 and 2024–2025 school

years, including but not limited to scores for quizzes, tests, assignments, and homework;

3. Dates of each progress report, report card, and semester reports for the 2023-2024 and 2024-2025 school year;

STUDENT WORK SAMPLES

The work samples request is overbroad. Student's work should have been returned to Student after being graded. Thus, Student has not established that this information is not equally available to Student. There is no explanation of why the teacher would have retained all work samples for the Student. Even had the teacher retained all work samples for the years in question, Student has failed to demonstrate a basis for all work samples being relevant to the case without being cumulative.

The subpoena is modified to require production of up to three work samples from each class for the 2023-2024 school year, beginning April 10, 2023, and up to three work samples for each class from the 2024-2025 school years. The subpoena pertains only to work samples in the District's, including the teacher's or District assessors' possession. When selecting work samples, if more than three are available in a class, the samples showing the most difficult work assigned to the student should be produced.

GRADE RECORDS

Student's request that Palm Springs produce all "gradebooks, grade reports, or teacher-maintained records showing Student's grades in each subject for the 2023–2024 and 2024–2025 school years, including but not limited to scores for quizzes, tests, assignments, and homework" is also overbroad. Student has not established why all of these records would be relevant without being duplicative or cumulative. Nor has Student established that his grades are not equally available to Student. Student has

already uploaded several grade reports to Case Center in his list of proposed exhibits. Palm Springs' motion to quash is granted as to Student's request for grade records.

DATES OF PROGRESS REPORTS REPORT CARDS AND SEMESTER REPORTS

Student's request that Palm Springs identify the dates for progress reports, report cards, and "semester reports" is quashed. Student has failed to state why this information is not equally available to Student. Nor is the reference to "semester reports" described. It is vague and unintelligible as stated.

AUGUST 4, 2025 REQUEST FOR ASSESSMENT EXAMINER MANUALS

California Code of Civil Procedure section 1985.3, subdivision (d), stated that service of a subpoena dues tecum must be made "in sufficient time to allow the witness reasonable time to locate and produce the records or copies thereof." The August 4, 2025 subpoena duces tecum for the four assessment examiner manuals was served six business days prior to the date they were to be produced. The subpoena, as issued, did not give Pam Springs adequate notice. Furthermore, there is no statement of how the manuals as a whole could be relevant. Student is treating this process as a civil discovery exercise as opposed to a subpoena of hearing evidence. The subpoena duces tecum will be modified.

Student counsel's declaration regarding the August 4, 2025 subpoena duces tecum is also deemed attached to the Statement of Necessity, which is signed under oath.

Palm Springs' motion to quash as to each of the examiner's manuals is granted in part. Student's statement of necessity is focused on the scoring of assessments. Palm

Springs shall produce a copy of any separately titled chapters related to scoring the assessments in the four manuals identified. Palm Springs may choose to produce the relevant chapters of the manual to Student as a paper or electronic copy. Given the delay in service of the subpoena, Palm Springs shall have until 9:00 AM on August 26, 2025 to upload any documents that meet this description.

ORDER

1. Palm Springs' motion to quash Student's July 31, 2025 subpoena to Jodi Curtis of Palm Springs Unified School District is granted in part as modified in this order.
2. Palm Springs' motion to quash Student's August 4, 2025 subpoena to Jodi Curtis of Palm Springs Unified School District is also granted in part as modified in this order.
3. All documents must be uploaded to Case Center no later than 9:00 AM, on August 26, 2025, as directed in the subpoena. Palm Springs may also directly disclose the documents to Student's counsel if they choose.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings