BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MENLO PARK CITY SCHOOL DISTRICT.

OAH CASE NUMBER 2024010353

ORDER GRANTING IN PART, AND DENYING IN PART, DISTRICT'S MOTION TO QUASH STUDENT'S SUBPOENA DUCES TECUM TO DISTRICT'S CUSTODIAN OF RECORDS

MAY 1, 2024

On January 11, 2024, Student filed a request for due process naming Menlo Park City School District, called Menlo Park District. On January 29, 2024, OAH issued an Order granting a joint request for a continuance of the hearing in this matter to May 7, 2024, through May 9, 2024.

On April 15, 2024, Student issued a subpoena duces tecum to the Menlo Park District, called the "Subject SDT." The materials demanded for production on May 7, 2024, are described in the Subject SDT as: "… a copy of any and all COMMUNICATIONS by any Menlo Park City School District ("DISTRICT") employees or

representatives relating to STUDENT held by DISTRICT from January 2023, through the present date. Specifically, STUDENT requests all communications related to her Individualized Education Plan development, assessments, specialized academic instruction, general education, reading interventions, and extended school year." "Communications" was defined in the Subject Subpoena SDT as "writings, emails, text messages, and/or correspondence." Student's attorney's affidavit attached to the Subject SDT further states the materials sought are not considered student records, were not previously provided Student in response to Student's request for her educational records, and can only be obtained pursuant to a subpoena duces tecum.

On April 22, 2024, the Menlo Park District filed a motion to quash the Subject SDT on the grounds that: it fails to show a reasonable necessity for the demanded documents; the description of requested documents is overbroad and vague; the request is oppressive and burdensome; and communications between the parties are equally accessed by Petitioners. On April 24, 2024, Student filed an opposition to Menlo Park District's motion asserting the Subject SDT properly limited the description of, and time frame for, the documents sought therein, and that Student gave facts supporting her claim that the demanded documents are reasonably necessary to present Student's case at hearing.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act, called the IDEA, 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 is similar to 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 applicable standard to subpoena documents in proceedings brought under the IDEA is the stricter "reasonable necessity" standard, instead of the "good cause" standard. However, both standards require a 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, the 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. OAH may also quash or modify a subpoena in response to a motion to quash a subpoena duces tecum.

REASONABLE NECESSITY FOR THE RECORDS

The Menlo Park District argues in its pending motion that the Subject SDT should be quashed because Student failed to make the requisite showing of reasonable necessity for the requested documents with a statement of facts in an affidavit showing that the material sought is relevant to the discrete issue and sub-issues in this case. The issue and sub-issues to be litigated at the hearing in this case, as established at the April 26, 2024 prehearing conference, are as follows:

1. Did Menlo Park City School District deny Student a free appropriate public education, called a FAPE, during the 2023 extended school year and the 2023-2024 regular school year, in the individualized education program, called an IEP, dated May 11, 2023, by failing to:

a) offer appropriate measurable goals in reading decoding, reading comprehension, reading fluency, math calculation, math reasoning, written expression, attention, and social-emotional functioning;

b) offer any goals in the following areas of need: Spanish vocabulary, Spanish reading comprehension, and math problem solving in Spanish;

c) offer appropriate specialized academic instruction;

d) offer appropriate one-to-one aide support services and curriculum modifications to Student when she was in in general education classes;

e) offer an appropriate placement, specifically, a small educational setting with interventions across all subjects; and

f) timely file a due process request seeking an Order confirming that the IEP dated May 11, 2023, offered Student a FAPE?

The declaration of Student's attorney given in support of the Subject SDT states in part, "[t]hese materials being sought are not considered student records, were not

previously provided to STUDENT in her student records request and can only be elicited via a subpoena. … The requested materials are reasonably necessary for STUDENT to present evidence on the issues raised in her complaint. STUDENT is not seeking documents that are protected by the attorney client privilege (e.g. emails or written communications exchanged between attorney and client)."

Student's attorney's declaration establishes under penalty of perjury that the documents subpoenaed are material and relevant to the issues in this case, and Student could not obtain them through a request to the Menlo Park District for Student's educational records. Student's attorney's declaration further establishes Student reasonably needs those materials to establish evidence at hearing on the issue and sub-issues which are the subject of the hearing. The documents sought by the Subject SDT, as restricted by this Order below, are reasonably necessary for Student to prove her case, and it is clear Student cannot obtain such material in any way other than through the Subject SDT.

THE SCOPE OF THE DOCUMENTS AS DESCRIBED IN THE SUBJECT SDT IS OVERBROAD AND IS HEREBY MODIFIED

The description of documents sought through the Subject SDT subpoena is overly broad because it includes "any and all COMMUNICATIONS by any Menlo Park City School District ("DISTRICT") employees or representatives relating to STUDENT held by the DISTRICT from January 2023, through the present date." Because this description (any communications by District employees related to Student) is overly broad it seeks documents beyond the issue and sub-issues in this case. The complaint alleges the Menlo Park District failed to offer Student a FAPE in the 2023 extended school year and the 2023-2024 regular school year. Therefore, Student has properly limited the time frame for the requested documents from January 2023 to present.

To properly limit the description of the documents sought by the Subject SDT to matters relevant to the issue and sub-issues in this case, the portion of that description must be limited to eliminate the documents described as "any and all COMMUNICATIONS by any Menlo Park City School District ("DISTRICT") employees or representatives relating to STUDENT held by the DISTRICT from January 2023, through the present date." This description is clearly overly broad and not limited to documents relevant to the issue and sub-issues in this case. Therefore, the description of the documents to be sought by the subject SDT is hereby modified to delete that portion of the description of documents demanded.

Consequently, the description of documents sought in the Subject SDT is hereby narrowed and modified as follows: "STUDENT requests all COMMUNICATIONS memorialized in writings, emails, text messages, and/or correspondence related to her Individualized Education Plan development, assessments, specialized academic instruction, general education, reading interventions, and extended school year, held by the Menlo Park City School District from January 2023, through the present date."

ORDER:

1. Menlo Park City School District's motion to quash is granted in part to the extent that the overly broad document description in the Subject SDT is narrowed and modified as follows: "STUDENT requests all COMMUNICATIONS memorialized in writings, emails, text messages, and/or correspondence related to her Individualized Education Plan development, assessments, specialized academic instruction, general education, reading interventions, and extended school year, held by the Menlo Park City School District from January 2023, through the present date."

2. Menlo Park City School District shall upload the documents responsive to the modified document description set forth in paragraph 1 of this Order to the applicable Case Center electronic evidence file for the Custodian of Records for the Menlo Park City School District by 9:30 AM on May 7, 2023, the first day of hearing in this case.
3. All other relief sought in Menlo Park City School District's motion to quash the Subject SDT is otherwise denied.

Christine Arden

Christine Arden
Administrative Law Judge
Office of Administrative Hearings