BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025041265

ORDER GRANTING MOTION TO QUASH SUBPOENAS DUCES TECUM

MAY 30, 2025

On April 28, 2025, Student filed a request for due process hearing naming Cupertino Union School District. On April 30, 2025, the Office of Administrative Hearings, called OAH, issued a scheduling order setting both expedited and non-expedited due process hearing dates. The expedited due process hearing began on May 28, 2025.

On May 14, 2025, Student, who is represented by his Parents, sent a subpoena duces tecum to Cupertino requesting compliance by May 28, 2025. However, the subpoena Parent sent on May 14, 2025, was not signed by an attorney or administrative law judge. Parent sent the subpoena to OAH on the same day. Presiding Administrative

Law Judge Dalton signed the subpoena, and OAH returned it to Parent on May 15, 2025. This will be called Student's First SDT. Cupertino moved to quash Student's First SDT on May 21, 2025. OAH quashed Student's First SDT on May 23, 2025.

On May 22, 2025, Student served on Cupertino a document entitled, "Parents' Revised First Request for Production Subpoena Duces Tecum." Student's May 22, 2025 subpoena did not include a substantive declaration establishing reasonable necessity for the records requested. This will be called the May 22 SDT.

Student subsequently filed a document entitled, "Parents' Declaration in Support of Revised First Request for Production Amended Subpoena Duces Tecum" on May 27, 2025. The May 27, 2025 declaration also added additional categories of subpoenaed records. Parent also served this document on Cupertino. This will be called the May 27 SDT.

On May 27, 2025, Cupertino filed a motion to quash Student's subpoenas on the grounds that the subpoenas seek civil discovery not permitted in special education due process proceedings and are overly broad, vague, and unduly burdensome. Cupertino also argued that Student failed to demonstrate a reasonable necessity for the records requested.

A party to a due process hearing under the Individuals with Disabilities Education Act, called 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).)

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.

CUPERTINO'S MOTION IS TIMELY

Pursuant to OAH orders, unless a particular motion is subject to a different filing timeline, parties must file prehearing motions no later than three business days prior to the prehearing conference, unless the party can establish good cause for the late filing. Here, Cupertino established good cause for the late filing of its motion to quash.

Student served the May 22 SDT and May 26 SDT after the expedited prehearing conference. Cupertino filed its motion to quash the day after Student served the May 26 SDT, which Student served on the Memorial Day holiday. Cupertino supported its motion with a sworn declaration establishing good cause for the late filing. Under these circumstances, Cupertino established good cause for the late filing.

THE MAY 22 SDT DOES NOT SHOW REASONABLE NECESSITY FOR THE RECORDS

Student failed to establish reasonable necessity for the requested records. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) The May 22 SDT is quashed for the same reasons

the Student's May 15, 2025 subpoena duces tecum was quashed in OAH's May 23, 2025 order.

Specifically, the declaration attached to the May 22 SDT fails to adequately demonstrate that the requested the documents are "reasonably necessary" for Student to present his case at the expedited hearing. The declaration supporting the May 22 SDT does not contain any explanation as to why and how each category of documents is necessary for the presentation of Student's case regarding the expedited issue. Student made no statement of the basis for the need for the records. Because Cupertino has established that the May 22 SDT should be quashed, the undersigned need not address the remainder of Cupertino's arguments regarding the May 22 SDT.

THE MAY 27 SDT IS UNTIMELY

California Code of Civil Procedure section 1985.3, subdivision (d), states 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." Code of Civil Procedure section 2020.410, subdivision (c) defines sufficient time as "no earlier than 20 days of the issuance, or 15 days after the service" of the subpoena, whichever is later.

Even considering the accelerated timelines of an expedited due process hearing, and the comparative informality of special education due process proceedings, Student has not provided Cupertino with sufficient time to respond to the subpoena. The May 27 SDT does not include a specific date and time for Cupertino to produce the requested documents. However, the May 27 SDT functions as an amendment to the May 22 SDT, which instructed Cupertino to produce the requested records on May 28, 2025, the first day of the expedited due process hearing. Student cannot reasonably

demand Cupertino to produce records with a single business day's notice. Therefore, the May 27 SDT is untimely and is quashed.

EDUCATIONAL RECORDS DO NOT REQUIRE SUBPOENA

Student does not have to demonstrate reasonable necessity to receive Student's educational records. Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act, called FERPA, to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "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); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

Pupil or education records do not include "records of instructional, supervisory, and administrative personnel…which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

Here, Student has failed to establish that all the requested records are "education records." However, some requested records may be "education records." Category A of the May 27 SDT, seeks production of completed educational assessments and related drafts, conducted pursuant to assessment plans dated in March and April 2025. There is no question that Education Code section 56504 requires a school district to provide parents with certain evaluation materials that pertain directly to their child. (*Newport-Mesa Unified School District v. State of California Department of Education* (C.D.Cal. 2005) 371 F.Supp.2d 1170.) It is unclear whether the recently completed assessment report has been reviewed by Student's IEP team and is thus an education record. Nevertheless, Parent is entitled to copies of educational assessments and any drafts

which are maintained in Student's permanent file. (See *S.A. ex rel. L.A. v. Tulare County Office of Education* (E.D.Cal. Sept. 24, 2009) 2009 WL 3126322, aff'd. *S.A. v. Tulare County Office of Education* (E.D.Cal. October 6, 2009) 2009 WL 3296653.) Cupertino is not required to provide documents not maintained in Student's permanent file or any further information sought by Category A.

Categories C, E, and H seek correspondence. Unless these documents were placed in Student's permanent file, they are not educational records. (See *S.A. ex rel. L.A. v. Tulare County Office of Education* (E.D.Cal. Sept. 24, 2009) 2009 WL 3126322, aff'd. *S.A. v. Tulare County Office of Education* (E.D.Cal. October 6, 2009) 2009 WL 3296653.) Student has not established that he is currently entitled to any records described in Categories C, E, and H which are not placed in Student's permanent file. However, any responsive documents that are maintained in Student's permanent file are subject to Parent's request without subpoena.

Category K calls for Student's attendance records at "YMCA/ELOP" for the entire 2024-2025 school year. Attendance records are generally considered education records. However, the requested records may not be within Cupertino's possession or maintained in Student's permanent record. Category K specifically requests Student's attendance in an afterschool program that Student concedes is run by another agency, the YMCA. Nevertheless, if Student's attendance records are maintained within his permanent record, Parent is entitled to a copy pursuant to Education Code section 56504. Cupertino is not required to provide documents not maintained in Student's permanent file or any further information sought by Category K.

Student did not establish that any of the other requested categories, as framed in either the May 22 SDT or May 27 SDT are education records.

Education Code section 56504 requires a school district to provide parents with copies of the requested records within five business days, or without unnecessary delay before a due process hearing. Here, because of the timing of Student's subpoenas, and all other circumstances, Cupertino is ordered to provide any applicable education records as ordered herein to Parent no later than June 4, 2025. Cupertino is not required to provide Parent with another copy of any records it has provided to Parent pursuant to a records request Parent may have made between April 1, 2025, and May 30, 2025.

Nothing about this Order prevents Cupertino from raising any objection should Parent seek to introduce the requested records as evidence during the expedited due process hearing.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings