BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CARLSBAD UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025030038

ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM

APRIL 18, 2025

On March 3, 3035, Student filed a request for due process, called the complaint, with the Office of Administrative Hearings, naming Carlsbad Unified School District. The Office of Administrative Hearings is called OAH. OAH granted Student's motion to amend the complaint and Student's amended complaint was filed on March 19, 2025. On March 24, 2025, OAH dismissed all claims falling outside of OAH's jurisdiction. On April 16, 2025, OAH continued the hearing to June 10 through 12, 2025, so the parties could participate in mediation on May 6, 2025.

On April 1, 2025, District issued a subpoena duces tecum on Variations Psychology. By the subpoena, Carlsbad Unified seeks production on May 6, 2025, of

eight categories of documents related to its assessment of Student and communications with Parent, Student's attorney and District's staff. District's subpoena states that the requested documents are reasonably necessary for the proper presentation of the case because it believes Student intends on presenting Variations Psychology assessment report and/or the testimony from Variations Psychology assessors/staff at the hearing in this case. It claims that in a California Department of Education filing, Student's attorney included as an exhibit an email between Variations Psychology and Student's attorney which District contends demonstrates Variations Psychology's likely involvement in this due process case and potential bias against District. Carlsbad Unified argues that it needs the requested records to defend against any evidence or testimony from Variations Psychology and to establish its potential bias against District.

On April 4, 2025, Student filed a motion to quash the subpoena on the grounds Carlsbad Unified failed to demonstrate reasonable necessity for the requested records, and because the subpoena is overbroad, vague and unduly burdensome. Student argues the records are not discoverable because they are protected by HIPPA regulations and are not probative or material to the issues in this case. Student argues that the affidavit supporting the subpoena fails to establish how or why the records are material or relevant to Student's issues, nor demonstrates potential bias by Variations Psychology against District. Student claims the email referenced in the subpoena was merely a request by Variations Psychology to Student's attorney regarding how to handle District's attempt to limit the assessor's observation, not what the assessor's evaluation should find.

Student also asserts District already has copies of the school records Variations Psychology reviewed or considered as part of the assessment because Student attends school in District. Student claims the assessment report will summarize the assessor's

observations and the results of the data analysis so there is no need for production of notes, collected data or logs prepared by Variations Psychology, or for the assessment tools and protocols it used in conducting its assessment. Student also argues that the records regarding payment of Student's assessment are harassing and burdensome for Variations Psychology, and that the subpoena does not explain why District needs the correspondence between Parent and Variations Psychology or the correspondence between Variations Psychology and District staff, and that District should already have the correspondence between it and Variations Psychology.

On April 8, 2025, District filed an opposition to the motion to quash. District argues Student put her educational needs and assessment at issue and that it needs the records to defend itself at hearing. It believes Student is intending to rely on Variations Psychology's assessment at hearing. District contends that since 2019, Variations Psychology assessor Dr. Marta Shinn, the assessor hired to conduct Student's assessment, has acted as a student's expert in eight due process hearings. District argues it needs the records to understand Dr. Shinn's opinions, findings or conclusions and defend against them. It argues it may not have all the records upon which the assessor relies. It asserts that if Student seeks reimbursement for the assessment, it needs the records pertaining to the payment for that assessment. District argues to help establish bias, it needs records of the payments and the communications between Variations Psychology and Parent, and Parent's attorney. District argues that the fact Variations Psychology reached out to Student's attorney by email demonstrates it may have been hired to build a case against District and that Student's counsel has had prior communications with Variations Psychology.

On April 11, 2025, Student filed a reply to District's opposition. Student argues that Variations Psychology is conducting an independent educational evaluation of

Student which was granted by District. Student argues that the email communication between Student's attorney and Variations Psychology is not relevant to any issue in the complaint and does not demonstrate bias or any improper influence by Student's attorney. Student also argues that because District approved the Parent's request for Student's independent educational evaluation, any payment records will not help it establish bias.

REASONABLE NECESSITY FOR THE RECORDS AND STUDENT'S RIGHT OF PRIVACY

The Individuals with Disabilities Education Act, called 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); 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).)

In general, there is no right to prehearing discovery in due process proceedings. Rather, the law accords prehearing access to two types of documents: (i) parents have the right to request and receive the pupil's educational records within five business days at any time, and (ii) the parties are entitled to receive copies of all the documents the other party intends to use at hearing, not less than five business days prior to the hearing. (Ed. Code, §§ 56504 & 56505, subd. (e)(7).)

A subpoena duces tecum seeking production of documents on the day the hearing commences may be appropriate if the requisite showing of "reasonable

necessity" is adequately made in a declaration supporting the subpoena and assuming no other legal bar to production exists.

Here, the declaration attached to District's subpoena fails to adequately demonstrate that all the requested the documents are "reasonably necessary" for District to present its case at hearing. The declaration supporting the subpoena contains a one paragraph summary regarding reasonable necessity, but it is vague and conclusory. It does not contain proper specificity explaining why and how each category of documents is necessary to the defense regarding one or more issues in this case.

As an initial matter, the subpoena appears to have been issued prematurely. District has not demonstrated that Student has named Variations Psychology or its staff as one of its witnesses in this case. Nor has District demonstrated Student has identified Variations Psychology's assessment report as an exhibit for hearing. The declaration states that "District believes that Student intends" on presenting the Variations Psychology assessment report and/or testimony from its staff at the due process hearing. Absent proof Student is intending to rely at hearing on testimony or documents from Variations Psychology, Carlsbad Unified has failed to establish reasonable necessity for production of the requested documents. The mere fact that Student's attorney and Variations Psychology communicated regarding District's observation limitations, and that Student's attorney attached a copy of that email communication to a filing made with the California Department of Education is insufficient.

Moreover, although District's opposition to the motion to quash contains some of the missing specifics as to how and why certain documents are reasonably necessary to the defense, the justification for requesting each of the documents is required to be

in the affidavit initially served with the subpoena. District is required to explain in the affidavit how and why each of the documents sought is reasonably necessary to defend against one or more of Student's claims. For example, District's subpoena references an email between Student's attorney and Variations Psychology to support its request, but it did not attach the email to the subpoena or adequately explain how it supports each or any of the enumerated requests. Further, District does not explain why it is requesting communications between Variations Psychology and District staff when those documents should already be within District's possession.

California law recognizes a constitutional right to privacy in certain types of consumer records. (See, e.g., *Pettus v. Cole* (1996) 49 Cal. App. 4th 402, 440 ["the 'zones of privacy' created by article 1, section 1 [of the California Constitution] extend to the details of one's medical history"]; *White v. Davis* (1975) 13 Cal3d 757, 774 ["Fundamental to our privacy is the ability to control circulation of personal information."].) However, the constitutional right of privacy is not absolute. (See, *In re Lifschutz* (1970) 2 Cal.3d 415, 438.) A party is recognized as waiving certain privacy rights regarding that party's medical or psychological condition to the extent the party has put such condition at issue. (*Id.*, at p. 435; see also, Evid. Code §§ 996, 1016.)

Student may well have a right to privacy in the records and the information contained in the documents sought by the subpoena. However, if Student decides to rely on the Variations Psychology assessment report or any of its staff's testimony at hearing, Student may have placed those records and the information contained therein at issue, making them subject to production at hearing based on a properly supported and tailored subpoena affidavit, regardless of HIPPA regulations. Demonstration of any bias by the assessor would also be an appropriate basis to subpoena certain documents based on a properly supported and tailored subpoena affidavit.

Moreover, the fact that District might already have copies of some of the school records Variations Psychology reviewed or considered as part of the assessment would not be not a proper basis for objection because there may be other documents it reviewed or relied upon which District does not have, and the breadth of documents Variations Psychology had or relied upon could be reasonably necessary to the defense when supported by a properly tailored subpoena affidavit . Nor does the fact that an assessment report contains a summary necessarily preclude the need for the underlying documents where the affidavit demonstrates why the underlying documents are reasonably necessary to the defense of Student's claims. If Student indicates it intends on relying on the assessment report at hearing, it may not use it as both a shield and a sword. Further, as a matter of logic, Student's objection to the production of documents as harassing and burdensome for Variations Psychology is without merit because Student has no standing to assert this objection on behalf of a third party.

As drafted, District's subpoena duces tecum and the affidavit supporting it are inadequate. Nothing in this order precludes Carlsbad Unified from serving a new subpoena duces tecum and supporting affidavit on Variations Psychology, drafted in conformity with this order.

ORDER

Student's motion to quash District's subpoena duces tecum is granted without prejudice to District's issuance of a new subpoena duces tecum on Variations Psychology.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings