BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

and

SAN JOSE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2021030858

OAH CASE NUMBER 2021050178

ORDER DENYING MOTION TO QUASH SUBPOENAS DUCES TECUM WITHOUT PREJUDICE

MAY 12, 2021

On March 24, 2021, Student filed a request for due process naming San Jose Unified School District, referred to as San Jose. On May 6, 2021, San Jose filed a request for due process hearing naming Student and a motion to consolidate cases. On May 10, 2021, OAH issued an order following prehearing videoconference and order consolidating cases. The due process hearing is scheduled to commence March 18, 2021.

On May 5, 2021., San Jose filed a motion to quash subpoenas. The motion alleges that on April 19, 2021, Student's attorney at law issued subpoenas duces tecum

to Robert Lee, Christopher Metcalfe and Seth Reddy, and on April 29, 2021 issued a subpoena duces tecum to Joseph Herrernan. San Jose argues the subpoenas should be quashed on the grounds the witnesses were not served personally, the subpoenas did not include or offer witness fees, and the request for documents is vague and overbroad.

Student filed on opposition brief on May 10, 2021, arguing counsel for San Jose failed to meet and confer prior to file the motion to quash, and further that the motion is procedurally defective because it failed to attach copies of the subpoenas.

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.

San Jose contends that Student failed to personally serve the witnesses with the subpoenas duces tecum in accordance with Code of Civil Procedure section 1987.1. San Jose did not attach a copy of the subpoenas with the proofs of service and therefore OAH cannot examine the validity of the subpoenas or whether they were properly served. Further, San Jose did not assert whether the witnesses are employees or former employees of San Jose, or whether San Jose will agree to accept service of the subpoenas for these witnesses. San Jose's motion to quash is denied without prejudice to San Jose' right to file a motion to quash with the subpoenas and proofs of service attached. In the event San Jose files a new motion to quash it should indicate which witnesses are employees or former employees over which San Jose has control. San Jose also should state whether it will accept service of process of the subpoenas with respect to its employees or former employees in accordance with OAH's Order Following Prehearing Conference and Granting Motion to Consolidate dated May 10, 2021. OAH also notes that Student's attorney has not provided OAH with a copy of

these three subpoena duces tecums, which prevents OAH from notifying these individuals to upload the requested documents onto CaseLines per the instructions on the subpoena duces tecum.

San Jose further contends that the subpoenas duces tecum are vague and overly broad. San Jose failed to attach copies of the subpoenas and therefore OAH cannot determine whether the information sought is reasonably necessary for Student to present at hearing. Further, copies of the subpoenas are necessary for OAH to analyze whether the requests are ambiguous or overly broad. San Jose's motion to quash is denied without prejudice to its right to refile its motion, which shall attach copies of the subpoenas it challenges.

ORDER

1. San Jose motion to quash Student's subpoenas duces tecum is denied without prejudice.
2. San Jose may refile its motion to quash and shall attach copies of the subpoenas and proofs of service.
3. Any further motion to quash by San Jose shall be supported by a declaration of counsel confirming whether San Jose has control over the subpoenaed witnesses and its willing to accept service of the subpoenas.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings