BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019090129

ORDER DIRECTING COMPLIANCE WITH SUBPOENAS PENDING RULING ON MOTIONS TO QUASH

JUNE 19, 2020

On January 6, 2020, Student filed an amended request for due process hearing, naming Chaffey Joint Union High School District. On February 21, 2020, a prehearing conference order issued, granting a continuance in this matter, and scheduling the hearing to begin on June 16, 2020.

On May 14, 2020, Chaffey issued eight subpoenas duces tecum to eight potential witnesses or entities. The subpoenas sought particular categories of documents in the witness's or entities' possession. They directed the witnesses or entities to submit their documents to the Office of Administrative Hearings, known as OAH. Notices to consumer were sent to Student advising Student of the subpoenas. Copies of the subpoenas were sent to Student with the notice to consumer. On June 8, 2020, Student filed motions to quash all eight subpoenas on the grounds that they were overbroad and sought documents that were not reasonably necessary for Chaffey's defense. On

June 11, 2020, Chaffey, opposed the motions. This Order concerns six of those subpoenas. The remaining two subpoenas will be addressed by a separate order.

As explained below, the motions to quash the subpoenas issued to potential witnesses or entities Chris Davidson, Cherie Francis Boegeman and/or Launchpad, Robin Morris, SKY Pediatric Therapy, Lindamood-Bell Learning Processes, and Bea Braun are under submission. Pending the final rulings, Student is ordered to instruct those six witnesses or entities to comply with the terms of the subpoenas and submit the documents to OAH. OAH will either destroy those documents, or provide the parties with electronic access to the documents, upon disposition of the motions.

APPLICABLE LAW

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) 107 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, 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.

REASONABLE NECESSITY FOR THE RECORDS

Student argues that the subpoenas should be quashed because they fail to make the requisite showing of reasonable necessity for the requested documents with a statement of facts showing the material and relevant information sought. (*Johnson v. Superior Court, supra,* 258 Cal. App.2d at 835-836; see also *Seven Up Bottling Company v. Superior Court, supra,* 107 Cal. App.2d at 77.)

Depending on the scope of Student's direct examination, however, the subpoenaed documents may be material and relevant. On Student's witness list, Chris Davidson is identified as an Educational Psychologist who evaluated Student in January 2017. Cherie Francis-Boegeman is identified as an Occupational Therapist who evaluated Student in January 2019. Robin Morris is identified as a Clinical Psychologist

who evaluated Student in February 2019. Richard Furbush is identified as an Occupational Therapist Clinician employed by SKY Pediatric whose anticipated testimony concerns an evaluation of Student in November 2019. Gabbi Gravatt and Brendan Marshall are identified as being associated with Lindamood-Bell, and are expected to testify concerning an evaluation of Student in January 2019 and concerning Student's progress in the Lindamood-Bell program. Bea Braun is identified as an Educational Audiologist who evaluated Student in November and December 2017.

Chaffey subpoenaed categories of documents from these witnesses or entities, stating a specified time period, all concerning their assessments of Student, the underlying information they considered in performing the assessments, their communications with specified individuals concerning Student and the assessments, their instructions and their compensation. The subpoenas to SKY and Lindamood Bell also requested service logs pertaining to Student.

The subpoenaed documents are potentially relevant to several of Student's issues and requested remedies. Student's Issue 1 alleges that Chaffey denied Student a free appropriate public education by failing to timely review certain independent educational evaluations. Issue 11 alleges that Chaffey denied Student a FAPE in the area of occupational therapy by failing to address his sensory needs and reducing his clinical occupational therapy services. Issue 13 alleges that Chaffey failed to give appropriate prior written notice when it refused to implement services recommended by independent educational assessors, specifically including in pertinent part, Robin Morris, Bea Braun, and Cherie Francis-Boegeman. The resolutions requested by Student include implementation of all services recommended by independent assessors, a reading remediation program, compensatory education and an order that Chaffey may not reduce speech and language and occupational therapy services recommended by the

independent educational evaluators. Thus, the subpoenaed documents could be reasonably necessary for Chaffey to mount its defense to these claims and remedies. The ultimate decision on the motions to quash will depend on the testimony Student elicits on direct examination.

The reasonable necessity of these documents is therefore under submission. Pending the final rulings, Student is ordered to instruct the witnesses to comply with the subpoenas such that OAH may provide the parties with timely electronic access to them, should the motions to quash ultimately be denied.

The subpoenas were procedurally proper. They were issued timely. They contain the requisite notice to consumer. They were accompanied by declarations establishing reasonable necessity for production. They do not seek prehearing discovery. They were issued to give adequate notice to allow for the production of documents to OAH, such that electronic access to the documents could be provided on the first day of hearing.

ORDER

1. Student's motions to quash Chaffey's subpoenas to Chris Davidson, Cherie Francis Boegeman and/or Launchpad, Robin Morris, SKY Pediatric Therapy, Lindamood-Bell Learning Processes, and Bea Braun are under submission.
2. Student is ordered to instruct Chris Davidson, Cherie Francis Boegeman and/or Launchpad, Robin Morris, SKY Pediatric Therapy, Lindamood-Bell Learning Processes, and Bea Braun to comply with the subpoenas issued to them, pending the final ruling on the motions to quash. Student is ordered to instruct Chris Davidson, Cherie Francis Boegeman and/or Launchpad, Robin Morris, SKY Pediatric Therapy, Lindamood-Bell Learning Processes, and Bea Braun to:

a. Sign and date the declaration of custodian described in the Subpoena Information Sheet.
b. Place the records or things, or an exact copy of the records, in an envelope or other wrapper.
c. Enclose a copy of the subpoena in the envelope.
d. Enclose the original of the declaration and seal the envelope.
e. Write the name and case number of the matter on the outside of the envelope.
f. Place the envelope in an outer envelope and mail it to the Office of Administrative Hearings at: 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. THE DOCUMENTS MUST ARRIVE AT THE OFFICE OF ADMINISTRATIVE HEARINGS ON FRIDAY JUNE 26, 2020, BETWEEN THE HOURS OF 8 AM AND NOON.
g. Call the Office of Administrative Hearings at 916-263-0880 to notify OAH that they have mailed the items for the subponea duces tecum, the anticipated delivery time, and tracking information.
h. Mail a copy of the declaration, but not the records or things, to the party who issued the subpoena.

DocuSigned by:
June Lehrman
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June Lehrman

Administrative Law Judge

Office of Administrative Hearings