

under HIPAA (to which patients or their parents do not have a right to access, see 45 C.F.R. § 164.524(a)(1)); (3) ethical obligations prevent Dr. Taylor from producing the requested information; (4) providing the information to untrained individuals presents a risk that data will be misinterpreted or used for an improper purpose; and (5) Petitioners may be attempting to obtain the assessment instruments in this proceeding for use in their pending malpractice litigation against Dr. Taylor. See Motion To Quash at 2-5.

On September 4, 2024, the undersigned issued an Order To Show Cause directing Petitioners to show cause in writing as to why the July 21 Subpoena should not be quashed. The order stated that Petitioners' response "should address each of the arguments raised by Dr. Taylor and also provide citations to any legal authority supporting why [Petitioners] are entitled to discover the requested information under the circumstances." Id. at 2. Further, the order directed Petitioners to "provide a detailed explanation of why they believe the requested information is relevant to the issues to be decided in this due process proceeding, and how they anticipate using the information in the due process hearing." Id. In bold type, the order stated: "the failure to timely or adequately respond to this Show Cause Order may result in an order quashing the July 21, 2024 Subpoena to Dr. Taylor without further notice to the parties." Id. at 1.

On September 5, 2024, Petitioners submitted their Motion To Compel, which the undersigned construes as a response to the show cause order, as well as a motion for relief. In the response/motion, Petitioners ask the undersigned to overrule the Motion To Quash and compel Dr. Taylor to produce the data collection sheets for the due process hearing without conditions or restrictions. Motion To Compel at 1, 5.

Analysis

As discussed, the July 21 Subpoena directs Dr. Taylor to produce the data collection sheets used to perform evaluations of D.U. and A.U. in August and September of 2023. On September 4,

2024, the undersigned directed Petitioners to show cause in writing why the July 21 Subpoena should not be quashed, including: (1) a response as to each argument raised by Dr. Taylor; and (2) a detailed explanation as to why the requested information is relevant to the issues to be decided in this due process proceeding. Order To Show Cause at 2.

In response to the show cause order, Petitioners make several arguments regarding issues raised by Dr. Taylor including, *inter alia*, that: (1) Dr. Taylor has not shown why the data collection sheets should be treated the same as psychotherapy notes; (2) Dr. Taylor should be required to produce the data collection sheets for a legal proceeding; (3) a detailed protective order could alleviate any copyright concerns; and (4) it does not make sense why Dr. Taylor is concerned that Petitioners will misinterpret, misuse, and disseminate the requested information, yet she does not seem to be concerned about allowing other untrained individuals to access to the information. See Motion To Compel at 2-4 (citing Dr. Taylor’s suggestion that the Hearing Officer could perform an *in camera* inspection).²

As a preliminary matter, Petitioners’ arguments do not show that, as a matter of right, they are entitled to obtain the information requested from Dr. Taylor.³ Moreover, despite the undersigned’s order specifically directing them to do so, Petitioners have *not* proffered an explanation showing how the requested information is relevant to the issues to be decided in this due process proceeding. Instead, Petitioners state: “There is no need to honor this argument

² Petitioners also assert that Dr. Taylor does not seem concerned about sharing the information with Respondent or its attorneys. Motion To Compel at 4. In reply, Dr. Taylor states that she has *not* produced the assessment tools to Respondent or its attorneys. See Reply In Support Of Motion To Quash Subpoena at 3 (dated September 10, 2024).

³ For instance, Petitioners cite Newport-Mesa Unified Sch. Dist. v. State of Calif. Dept. of Educ., 371 F. Supp.2d 1170 (C.D. Cal. 2005), to support their contention that Dr. Taylor should be required to produce the data collection sheets in a legal proceeding. See Motion To Compel at 2-3. However, that case involved a parent’s request for the *school’s* test protocol and whether the “fair use doctrine” under federal copyright law applied to California’s state law requirement that parents of special education students have the right to examine all school records of their child. By contrast, here, it appears the data collection sheets concern a private therapist’s evaluation of the students, and there is no indication that the requested documents constitute school records and/or that state law requires them to be produced.

[regarding relevance] by refuting it.... It is nonsensical to argue that an independent educational evaluation is irrelevant to a special education due process hearing.”⁴ Motion To Compel at 4-5.


Contrary to Petitioners’ contention, the relevance of the data collections sheets to the matters in dispute in this due process proceeding is not self-evident. Based on Petitioners’ allegations, it appears that, in the late summer or fall of 2023, Dr. Taylor conducted private, independent evaluations of D.U. and A.U, and Petitioners received the results of the evaluations. See, e.g., July 21 Subpoena; Due Process Complaint at 12 (discussing therapist’s letter regarding D.U. that Petitioners shared with Respondent in August of 2023). Petitioners have provided no explanation to show how or why the underlying data collection sheets utilized by Dr. Taylor are relevant and/or necessary to prove their due process claims in this proceeding. See Pre-Hearing Order at 1-2 (dated August 23, 2024) (asserting various claims based on alleged conduct by Respondent from August 2022 to February 2024).

In light of Petitioners’ failure to make a prima facia showing as to relevance in response to the undersigned’s show cause order and the substantial arguments raised by Dr. Taylor, the undersigned finds the July 21 Subpoena should be quashed.

IT IS THEREFORE ORDERED that the Motion To Quash July 21, 2024 Subpoena submitted by non-party Tish Holub Taylor, Ph.D. (dated 08/30/24) is **SUSTAINED**.

The subpoena signed on July 21, 2024, commanding Dr. Taylor to produce certain data collection sheets (Ex. A to Motion To Quash) is hereby **QUASHED**.

Dated: September 20, 2024



Angela D. Gupta
Special Education Hearing Officer

⁴ Petitioners also assert that the July 21 Subpoena “was not subject to debate, faced no objection from the opposing party, and was swiftly approved by the Hearing Officer.” Motion To Compel at 5. As a non-party to the proceeding, however, Dr. Taylor’s first opportunity to object arose after she received notice and/or service of the subpoena.