BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

GONZALES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022100267

# ORDER GRANTING IN PART MOTION TO QUASH SUBPOENA DUCES TECUM AND MODIFYING SUBPOENA

NOVEMBER 23, 2022

On October 11, 2022, Parent on behalf of Student, filed a Request for Due Process Hearing with the Office of Administrative Hearings, called OAH, naming Gonzales Unified School District. On October 11, 2022, OAH issued a scheduling order setting the matter for hearing on November 29, 2022, through December 1, 2022.

On October 26, 2022, Student served a subpoena duces tecum on Gonzales Unified's special education director Eric Olsen. The subpoena to Olsen sought notes, memos, emails, or other communications in Olsen's possession or control, with Monterey County Office of Education and Gonzales Unified staff, about or relating to

Student's special education placement or potential placement for the 2022-2023 school year.

Student attached to the subpoena a "description of records and/or things to be produced." In the description, Student asserts that the records sought are necessary and relevant to the issues involving the alleged failures by Gonzales Unified to provide and offer Student an appropriate placement, and to allow Parents an opportunity to observe a proposed placement. Student also asserts in the subpoena that the records are relevant to the issue of whether Gonzales Unified predetermined its offer in Student's individualized education program, also called IEP, services. Further, Student claims the records are relevant to assess witness credibility, and for impeachment and rebuttal purposes. The subpoena required Olsen to produce the requested records on the first day of hearing set for November 29, 2022, at 9:30 AM, by uploading the records to the electronic evidence system.

On November 17, 2022, Gonzales Unified filed a motion to quash the subpoena on the grounds that the subpoena fails to make a requisite showing of reasonable necessity for the request; is overbroad, burdensome, oppressive, and improper prehearing discovery; and fails to identify the requested records with reasonable specificity.

At the November 21, 2022 prehearing conference, OAH continued the hearing for good cause for one day. The hearing was continued to begin on November 30, 2022, at 9:30 AM.

On November 22, 2022, Student filed an opposition to the motion arguing the records sought are necessary to the issue of whether Gonzales Unified's placement offer was appropriate. Specifically, Student argues that the written communications between

Gonzales Unified and Monterey County Office of Education sought by Student is specific and material to the placement issues.

## APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities Education Act has the right to present evidence and compel the attendance of witnesses in a hearing conducted pursuant to subsections (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, the hearing officer shall have the right to issue subpoenas, which are orders to appear and give testimony, and subpoenas duces tecum, which are orders to produce documents or papers 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 states:

> 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, 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.

## DISCUSSION

In his opposition, Student clarified that the communications sought are written communications involving emails and letters. Student's description of records asserting the necessity and relevance of the records sought establishes that the subpoenaed records involving written communication with Monterey County Office of Education are material and relevant to the issue involving the appropriateness of Gonzales Unified's placement offer at a Monterey County Office of Education school site.

However, the dates of records sought was not specified in the subpoena. The records to be produced shall be limited to written communications that occurred from Gonzales Unified's first day of instruction for the 2022-2023 school year, through October 11, 2022, the date Student filed his due process hearing request. Accordingly, the subpoena is modified to require Olson to produce the requested written communications as described in this Order by the first day of hearing set for November 30, 2022, at 9:30 AM.

The subpoena, with the exception of the modification described above, is quashed for the following reasons. The alleged failure by Gonzales Unified to allow Parents an opportunity to observe a Monterey County Office of Education program is not an issue to be decided at hearing. Therefore, the records sought by the subpoena

for that reason is not necessary. In addition, the subpoena fails to establish the records requested are reasonably necessary to witness credibility, or for impeachment and rebuttal purposes.

Furthermore, the subpoena fails to establish the records sought involving communications with Gonzales Unified's staff are necessary. Student offered no explanation, either in the subpoena or in Student's opposition, for the necessity of Olsen's communications with Gonzales Unified's staff.

## ORDER

1. Gonzales Unified's motion to quash Student's subpoena is granted in part and the subpoena is hereby modified. Eric Olsen shall produce written communications, including electronic mail, with Monterey County Office of Education relating to Student. The records to be produced are limited to written communications within Olsen possession or control, that occurred from the first day of instruction for Gonzales Unified's 2022-2023 school year, through October 11, 2022, the date Student filed his due process hearing request.
2. Olsen shall produce the records in accordance with OAH's Instructions for Responding to an OAH Subpoena, and shall upload the subpoenaed records to the electronic evidence system no later than the first day of hearing on November 30, 2022, at 9:30 AM.

3. Counsel for Gonzales Unified shall immediately serve a copy of this Order on Eric Olsen.

IT IS SO ORDERED.

*Rommel P. Cruz*

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings