BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CLASSICAL ACADEMY HIGH SCHOOL

OAH CASE NUMBER 2023100812

ORDER GRANTING IN PART MOTION TO QUASH SUBPOENAS DUCES TECUM FOR JANICE MEDINA, DANA MOEN, AND CUSTODIAN OF RECORDS FOR CLASSICAL ACADEMY AND MODIFYING SUBPOENAS

MAY 6, 2024

On October 20, 2024, Parent of behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, naming Classical Academy High School, El Dorado County Charter Special Education Local Plan Area or SELPA, and El Dorado Union High School District. The Office of Administrative Hearings is called OAH.

On November 8, 2023, OAH dismissed El Dorado County Charter SELPA and El Dorado Union as parties in this matter. OAH granted a continuance of the due process hearing on November 15, 2023, and again on February 5, 2024, scheduling this matter for hearing to begin on April 30, 2024. The due process hearing was held on April 30, and May 1 and 2, 2024, and continued to May 7, 2024.

On April 23, 2024, Student issued subpoenas duces tecum on Janice Medina, Dana Moen, and Classical Academy's custodian of record for testimony and documents. Medina is a program specialist for Classical Academy. Moen is a principal for Classical Academy. The subpoenas to Medina, Moen, and Classical Academy's custodian of record sought:

1. any and all communications, investigation records, and incident reports related to Student; and
2. any and all notices Classical Academy provided to Escondido Union School District pursuant to Education Code section 47605, subdivision (d)(3).

The subpoenas defined communication as writings, emails, and correspondences.

The subpoenas duces tecum ordered Medina, Moen, and Classical Academy's custodian of records to produce the requested documents on April 30, 2024. Student included an affidavit by Student's attorney with each subpoena duces tecum that described the records sought and why the records sought are relevant and material. Student's attorney also asserted there is a reasonable necessity for the documents and things described in the subpoena duces tecum.

On April 25, 2024, Classical Academy filed a motion to quash the subpoenas duces tecum for Medina, Moen, and its custodian of records on the grounds that the subpoenas were procedurally deficient because if failed to provide the witnesses

sufficient time to comply with the records requests. Classical Academy also argues Student failed to establish the records sought by way of subpoena were reasonably necessary, and the requests were vague and overboard. Classical Academy's motion to quash included an affidavit by Classical Academy's attorney. On April 30, 2024, Student filed an opposition to the motion to quash.

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 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, the hearing officer shall have the right to issue a subpoena, which is an order to appear and give testimony, and a subpoena duces tecum which is an order 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 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, 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.

California Code of Civil Procedure section 1985.3, subdivision (d), stated that service of a subpoena dues tecum must be made in sufficient time to allow the witness reasonable time to locate and produce the records or copies thereof. Code of Civil Procedure section 2020.410, subdivision (c) defines sufficient time as no earlier than 20 days of the issuance, or 15 days after the service of the subpoena, whichever is later.

REASONABLE NECESSITY FOR THE RECORDS

Classical Academy argues that the subpoenas duces tecum should be quashed because they fail to make the requisite showing of reasonable necessity for the requested documents as they pertain to the issues to be heard and decided in this matter. (*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.) Classical Academy also argues production of records related to notices pursuant to Education Code section 47605, subdivision (d)(3) is not necessary because Classical Academy has provided those records to Student as part of the exchange of exhibits under Education Code section 56505, subdivision (e)(7). Education Code section 47605, subdivision (d)(3) involves a charter school's obligation to notify the superintendent of the school district of a

student's last known address within 30 days, if the student is expelled or leaves the charter school without graduating or completing the school year for any reason. In addition, the charter school shall, upon request, provide that school district with a copy of the cumulative record of the student, including report cards or a transcript of grades, and health information. (Ed. Code, § 47605, subd. (d)(3).)

Student contends the records sought are reasonably necessary for Student to prove its case in Issues 5 and 6 as described in the Order Following Prehearing Conference for Hearing by Videoconference dated April 13, 2024, regarding the alleged failures by Classical Academy to respond to the bullying of Student and the injuries suffered by Student. Student also contends the records sought regarding Classical Academy's compliance with Education Code section 47605, subdivision (d)(3) are relevant to the determination of whether Classical Academy was the responsible local educational agency during the 2023-2024 school year.

The affidavit in support of the subpoenas for Medina, Moen, and the custodian of record for Classical Academy established the records sought are reasonably necessary for Student to litigate its claims that Classical Academy failed to properly respond to the bullying of Student and the injuries suffered by Student, and to determine if Classical Academy was the local educational agency responsible for Student for the 2023-2024 school year. Accordingly, Classical Academy's motion to quash the subpoenas duces tecum for Medina, Moen, and the custodian of record for Classical Academy on the grounds that the subpoenas failed to establish good cause for production of the records is denied.

SCOPE OF THE SUBPOENAS

Classical Academy contends the requests for all communications as defined in the supporting affidavit is vague and overly broad, and the affidavit fails to specify the time of the requested communications. In its opposition, Student contends the subpoenas are reasonably specific, and the records sought fairly narrow.

The supporting affidavit describes with sufficient specificity the documents sought to be produced. The evidence at hearing at this point, established that Student enrolled in Classical Academy in August 2021. The documents to be produced are limited the time of Student's enrollment, through the 2023-2024 school year. Classical Academy's requests for any and all communications within that time frame, and for documents in the control of Medina, Moen and Classical Academy's custodian of record, are not overly broad. Accordingly, Student's motion to quash the subpoenas duces tecum on the basis that the subpoenas are vague and overly broad, is denied.

To the extent records provided to Student by Classical Academy pursuant to Education Code section 56505, subdivision (e)(7), are responsive to the subpoenas duces tecum, Medina, Moen, and Classical Academy are not required to produce those records pursuant to the subpoenas.

INSUFFICIENT NOTICE TO COMPLY

Student's subpoenas duces tecum failed to provide Medina, Moen, and the custodian of records for Classical Academy with reasonable time to locate and produce the records or copies thereof and comply. The subpoenas were served on Medina, Moen, and the custodian of records for Classical Academy on April 23, 2024, less than 15 days before April 30, 2024, the date the subpoenas designated the records were to be produced. Accordingly, Classical Academy's motion to quash the subpoenas duces

tecum for Medina, Moen, and the custodian of records for Classical Academy is granted in part and the subpoenas are modified to order production of the requested records by 9:30 AM, on May 8, 2024.

ORDER

1. Classical Academy's motion to quash the subpoenas duces tecum for Medina, Moen, and the custodian of record for Classical Academy are granted in part and the subpoenas duces tecum are hereby modified to change the date of production of the documents to May 8, 2024, at 9:30 AM.
2. To the extent records provided to Student by Classical Academy pursuant to Education Code section 56505, subdivision (e)(7), are responsive to the subpoenas duces tecum for Medina, Moen, and the custodian of records for Classical Academy, the witnesses are not required to produce those records pursuant to the subpoenas.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings