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 MOTIONS TO QUASH SUBPOENAS DUCES TECUM FOR MARIANNE HUGHES, MEGAN SULLIVAN, AND THE CUSTODIAN OF RECORDS FOR FUSION ACADEMY AND MODIFYING SUBPOENAS

APRIL 24, 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, and El Dorado Union High School District. The Office of Administrative Hearings is called OAH.

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

On April 11, 2024, Classical Academy served Student Notices to Consumers and subpoenas duces tecum for Marianne Hughes, Megan Sullivan, and the custodian of records for Fusion Academy. Huges and Sullivan are employed by Fusion Academy. Proofs of service established that on April 17, 2024, Classical Academy served the subpoenas duces tecum on Hughes, Sullivan, and the custodian of records for Fusion Academy. The subpoenas duces tecum ordered the requested records to be produced by April 11, 2024. Classical Academy included an affidavit by Classical Academy's attorney with each subpoena that described the records sought and why the records sought are relevant and material.

The subpoenas duces tecum for Hughes and Sullivan seeks all documents from May 1, 2023, through the 2023-2024 school year, involving assessments of Student including test protocols, documents considered in assessing Student's present levels of academic and functional performance, his educational history, progress reports and test scores. The subpoenas duces tecum for Hughes and Sullivan also seek reports of Student's behaviors, records of interventions and related services provided to him, and observations and meeting notes involving Student.

The subpoena duces tecum for Fusion Academy's custodian of records seeks any and all documents from May 1, 2023, through the 2023-2023 school year, regarding Student's enrollment, contracts for enrollment and services, invoices and payment records, and attendance. The subpoena duces tecum further seeks any and all documents related to services provided to Student, including proof that services were

delivered, progress reports, test scores, meeting notes, observations, data collection, and videos of Student.

In addition, each of the subpoenas duces tecum seeks all correspondences that occurred from May 1, 2023, through the 2023-2024 school year, between Fusion Academy and Student's attorneys and expert witnesses, or any other attorney or advocate representing Student and Parent. The records sought in each of the subpoenas involve documents completed or considered by teachers, service providers, specialists, aides, and assessors employed or contracted by Fusion Academy.

On April 17, 2024, Student filed motions to quash the three subpoenas duces tecum on the grounds that the requests in the subpoenas were vague, overboard, burdensome, and oppressive. Student also contends Classical Academy failed to establish the records sought were reasonably necessary. Student's motions to quash included an affidavit by Student's attorney, the Notices to Consumer, and the subpoenas duces tecum. On April 19, 2024, Classical Academy filed an opposition to the motions to quash.

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, 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 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, 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.

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (20 U.S.C. § 1400 et seq.) Education Code, section 56505, subdivision (a), provides that the state hearing shall be conducted in accordance with regulations adopted by the board, and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. Prehearing discovery in special education cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District,* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

REASONABLE NECESSITY FOR THE RECORDS

Student 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 contends the records sought are reasonably necessary to challenge Student's claim that while attending Fusion Academy, he made progress in the areas of academics, social-emotional and behavioral functioning, speech and language, and occupational therapy, and therefore, is entitled to reimbursement for the costs of attending Fusion Academy.

The affidavit in support of the subpoenas for Huges, Sullivan, and the custodian of record for Fusion Academy established the records sought are reasonably necessary for Classical Academy to challenge Student's claim that he made progress at Fusion Academy, such that he should reimbursed for the costs of attending Fusion Academy. Accordingly, Student's motions to quash the subpoenas duces tecum for Huges, Sullivan, and the custodian of record for Fusion Academy on the grounds that the subpoenas failed to establish good cause for production of the records is denied.

SCOPE OF THE SUBPOENAS

Student contends the requests for any and all documents of the records described in the supporting affidavit are vague, overly broad, burdensome, and oppressive. In its opposition, Classical Academy contends the subpoenas are sufficiently specific, and compliance is not unduly burdensome.

The supporting affidavit describes with sufficient specificity the documents sought to be produced. The documents to be produced are limited to those completed and considered by Fusion Academy's employees and contractors from May 1, 2023, through the 2023-2024 school year. Classical Academy's requests for any and all documents within that time frame, and for documents described in the affidavit that are in the control of Hughes, Sullivan, and Fusion Academy's custodian of record, are not

overly broad. Further, locating and coping the requested documents is not so burdensome or oppressive to warrant quashing the subpoenas. Accordingly, Student's motion to quash the subpoenas duces tecum on the basis that the subpoenas are vague, overly broad, burdensome, and oppressive is denied.

However, Classical Academy's subpoenas duces tecum failed to provide Hughes, Sullivan, and the custodian of records for Fusion Academy with reasonable time to locate and produce the records or copies thereof and comply. The subpoenas were served on Hughes, Sullivan, and the custodian of records for Fusion Academy on April 17, 2024, more than five days after April 11, 2024, the date the subpoenas designated the records were to be produced. Though the Notices to Consumer stated that Classical Academy sought records for examination of the parties on April 30, 2024, the Notices to Consumer were not provided to Hughes, Sullivan, or the custodian of records for Fusion Academy, and did not provide Hughes, Sullivan, or the custodian of records for Fusion Academy with a clear date to comply. Furthermore, the subpoenas duces tecum sought records to be produced more than 19 days before the start of hearing, which constitutes impermissible prehearing discovery. Accordingly, Student's motions to quash the subpoenas duces tecum for Hughes, Sullivan, and the custodian of records for Fusion Academy are granted in part and are modified to order production of the requested records by 9:30 AM, on April 30, 2024.

ORDER

1. Student's motions to quash the subpoenas duces tecum for Hughes, Sullivan, and the custodian of record for Fusion Academy are granted in part and the subpoenas duces tecum are hereby modified to change the date of production of the documents to the first day of hearing, presently April 30,

2024, at 9:30 AM. If the hearing date is continued, the date of production shall be the first day of the continued hearing.

2. Counsel for Classical Academy shall immediately serve a copy of this Order on Hughes, Sullivan, and the custodian of record for Fusion Academy.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings