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 FUSION ACADEMY TEACHERS

MAY 3, 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, 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 25, 2024, Classical Academy issued subpoenas duces tecum to seven teachers employed by Fusion Academy, for testimony and documents:

1. Mikaela Paraine
2. Sol Moscol
3. Danielle Pigeon
4. Glen Clabaugh
5. Eric Flowers
6. Brian Dugan
7. Alejandra Pacheco

Notices to Consumer were sent to Student advising Student of the subpoenas duces tecum directed to Fusion Academy's seven teachers listed above. Copies of the subpoenas duces tecum were sent to Student with the Notices to Consumer.

Each of the subpoenas duces tecum to Fusion Academy's teachers were identical in the types of records sought. The subpoenas duces tecum sought from each teacher records of Student involving:

- informal and formal assessments by the teacher;
- documents considered by the teacher in assessing Student's strengths and weaknesses, academics, and determining a treatment and intervention plan;
- educational history, background, and placement;
- progress or lack of progress, including test scores;
- social-emotional and behavioral functioning;

- remedies, interventions, and related services provided to Student;
- documents used by the teacher to prepare for testimony in this proceeding;
- documents, notes, emails of communications with Parent, Student's attorney and the attorney's law firm;
- testing protocols, including observations, related to assessments of Student;
- notes of meetings held regarding Student;
- notes of observations of Student; and
- data collected of Student.

The subpoenas duces tecum ordered the records to be produced on May 7, 2024. Classical Academy included an affidavit by Classical Academy's attorney with each subpoena duces tecum that described the records sought and why the records sought are relevant and material. Classical Academy's attorney also asserted there is a reasonable necessity for the documents and things described in the subpoena duces tecum.

On April 24, 2024, Student filed motions to quash the subpoenas duces tecum for each teacher on the grounds that the requests 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 30, 2024, Classical Academy filed an opposition to the motions to quash.

At the hearing, Student represented the testimony of Fusion Academy's teachers were relevant only to the remedy of reimbursement for costs of Fusion Academy. The parties represented Fusion Academy's teachers did not attend any of Student's

individualized education program team meetings while Student was enrolled at Classical Academy, and were not involved in developing the individualized education programs at issue.

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.

REASONABLE NECESSITY FOR THE RECORDS

The affidavit in support of the subpoenas duce tecum claims 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. Student argues that the subpoenas duces tecum should be quashed because each fails 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* (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 he made progress while attending Fusion Academy, and therefore, is entitled to reimbursement for the costs of attending Fusion Academy.

Classical Academy failed to establish the records sought from Fusion Academy's teachers are reasonably necessary in this matter. The records sought from Fusion Academy's teachers are not reasonably necessary because Classical Academy issued subpoenas duces tecum on April 17, 2024, on two administrators at Fusion Academy and Fusion Academy's custodian of records seeking similar records. The subpoenas duces tecum for Fusion Academy's two administrators sought production of

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 the administrators also sought 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 sought 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 sought 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, the subpoenas duces tecum for Fusion Academy's administrators and custodian of records sought 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 those subpoenas duces tecum involved documents completed or considered by teachers, service providers, specialists, aides, and assessors employed or contracted by Fusion Academy.

The records sought from the Fusion Academy's teachers are not reasonably necessary because similar records to be produced by Fusion Academy's administrators and custodian of records, along with an opportunity to cross-examine the teachers at hearing, permits Classical Academy to challenge Student's claims he made sufficient progress at Fusion Academy and is therefore entitled to reimbursement for the costs of

attending Fusion Academy, without the need for Fusion Academy's teachers to produce the requested documents. Accordingly, Student's motions to quash Classical Academy's subpoenas duces tecum to Mikaela Paraine, Sol Moscol, Danielle Pigeon, Glen Clabaugh, Eric Flowers, Brian Dugan, and Alejandra Pacheco are granted in part. The subpoenas for records to Mikaela Paraine, Sol Moscol, Danielle Pigeon, Glen Clabaugh, Eric Flowers, Brian Dugan, and Alejandra Pacheco are hereby quashed, but the subpoenas are still in effect as to testimony by each witness.

Furthermore, a determination on whether the subpoenas duces tecum are vague, overboard, burdensome, and oppressive is not necessary because Classical Academy failed to establish good cause for the subpoenas duces tecum for Fusion Academy's teachers.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings