

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT AND SIERRA
EXPEDITIONARY LEARNING SCHOOL.

OAH CASE NUMBER 2026050505

ORDER DENYING STUDENT'S FIRST AND SECOND
MOTIONS TO QUASH SUBPOENAS TO O'GORMAN

JULY 20, 2026

On May 6, 2026, Student's mother, called Parent, on behalf of Student, filed a request for due process, called a complaint,. The complaint named Tahoe Truckee Unified School District, called Tahoe Truckee, and Sierra Expeditionary Learning School, called Sierra. On May 21, 2026, Student filed an amended complaint naming Tahoe Truckee and Sierra. The due process hearing is scheduled to begin July 21, 2026.

On July 14, 2026, Sierra issued a subpoena to Student's father, Martin O'Gorman, called O'Gorman. On July 15, 2026, Tahoe Truckee issued a subpoena to O'Gorman.

On July 15 and 16, 2026, respectively, Parent filed first and second motions to quash Sierra's and Tahoe Truckee's subpoenas, respectively, on the ground that O'Gorman is a non-party spouse protected by an absolute privilege against testifying against his spouse under California Evidence Code, section 971. Parent also argued that O'Gorman is not a percipient witness with relevant knowledge, and that the subpoena is meant to harass Parent and O'Gorman.

On July 15, 2026, Sierra filed an opposition, arguing that the Evidence Code does not apply to due process hearings, and that the spousal privilege against testifying was held by O'Gorman and could not be asserted by Parent. Sierra also argued that section 971 did not apply because Student, not Parent, was a party to the action, and only the marital communication privilege of Evidence Code, section 972 is absolute, unless waived. Sierra contends O'Gorman is a co-holder of Student's educational rights and a percipient witness, subject to Sierra's right to call and cross-examine witnesses (Gov. Code, § 11513, subd. (b)), and Parent's harassment allegations are unsupported.

On July 16, 2026, Tahoe Truckee filed an opposition, arguing it has the right to compel the attendance of witnesses in due process hearings, and that Parent had no right to assert a privilege held by O'Gorman.

On July 16, 2026, Student filed a reply, noting the rules of privilege apply to administrative hearings (Gov. Code, § 11513, subd. (e)), and including an unsigned declaration of O'Gorman stating he asserts the privilege against testifying against Parent under Evidence Code, section 971, and does not consent to testify. Student included a screenshot of O'Gorman's phone, purportedly from the school asking about Student's attendance, which Student contends establishes harassment.

A party to a due process hearing under the Individuals with Disabilities in Education Act, called the IDEA, has the right to present evidence and compel the attendance of witnesses. (20 U.S.C. § 1415(h); see also Ed. Code, § 56505, subd. (e).)

In special education proceedings in California, the hearing officer has the right to issue subpoenas ordering a person to appear and give testimony. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) In a due process hearing, each party has the right to confront, cross-examine, and compel the attendance of witnesses. (Ed. Code, § 56505, subd. (e)(3).)

Special education law does not specifically address motions to quash subpoenas. In ruling on such motions, Office of Administrative Hearings, referred to as 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.

Here, Parent brings this due process hearing on behalf of Student, and is not herself a party to the proceeding. The privilege of Evidence Code, section 971, not to be called as a witness does not apply in a proceeding where the other spouse is not a party. (7 Cal.L.Rev.Comm. Reports 1(1965).) Accordingly, neither Sierra nor Tahoe Truckee are parties adverse to Parent against whom O’Gorman may assert the marital privilege of section 971.

Additionally, documents disclosed by Parent on behalf of Student to Sierra and Tahoe Truckee contain written communications between O’Gorman and employees and representatives of Sierra and Tahoe Truckee. Those communications render O’Gorman a percipient witness to such communications, some or all of which may be relevant and

reasonably necessary to Sierra's and Tahoe Truckee's defense, and would not be subject to a marital communications privilege.

The confidential spousal communications privilege (Evid. Code, § 980) is waived with respect to communication protected by the privilege if any holder of the privilege, without coercion, disclosed a significant part of the communication or consented to disclosure made by anyone. (Evid. Code, § 912.) To the extent Parent or O'Gorman assert a marital communications privilege as to any question asked, they may assert that privilege as an objection at the time the question is asked, and Sierra or Tahoe Truckee may attempt to establish a waiver of the privilege. The ALJ presiding at the due process hearing will determine whether a privilege or waiver applies.

The privilege against testifying in Evidence Code, section 971, is to avoid the prejudicial effect of requiring a spouse to object to testifying against their spouse before a jury. (7 Cal.L.Rev.Comm. Reports 1(1965).) There is no jury in due process hearings, or reason to assert section 971 privilege in those proceedings.

Lastly, Parent cannot use marital privilege as both a sword and a shield. Parent cannot submit evidence of communications between O'Gorman and Sierra and Tahoe Truckee to prove parental directives or involvement, and then assert marital privilege to prevent Sierra and Tahoe Truckee from defending against that evidence.

Student's first and second motions to quash are denied.

IT IS SO ORDERED.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings