BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020120698

# ORDER GRANTING AND DENYING, IN PART, DISTRICT'S MOTION TO QUASH SUBPOENA

MARCH 30, 2021

On November 23, 2020, Student requested records from Corona-Norco Unified School District. On December 1, 2020, Corona-Norco sent two separate emails with four PDF files containing the Student's records.

On December 19, 2020, Parent on Behalf of Student filed a request for due process naming Corona Norco. On February 1, 2021, an order granting a continuance in this matter was issued, scheduling the case for hearing on March 23, 24, and 25, 2021.

On March 15, 2021, a prehearing conference, referred to as a PHC, was held. In the PHC order, Student was to "provide written verification to Corona-Norco's counsel that Student, Parent, or Counsel specifically requested [identified documents] as part of

a Student's Record request." The documents were identified as Item Numbers 18, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 43, 44, 45, 46, 47, 48 and 49 on Student's January 27, 2021 PHC statement. If not, Student was to subpoena the specific documents by March 15, 2021.

On March 15, 2021, Student issued a subpoena duces tecum on Corona-Norco for the identified items. On March 18, 2021, Corona-Norco filed a motion to quash the subpoenas because Student failed to establish a reasonable necessity for the documents, the requests were overbroad and vague, and Student did not provide a reasonable time for Corona-Norco to comply with the subpoena. On March 22, 2021, Student opposed the motion. The Administrative Law Judge, referred to as an ALJ, issued the following order on the first day of the hearing, March 23, 2021.

## APPLICABLE LAW

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, "[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (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, the 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.

## INSUFFICIENT NOTICE TO COMPLY

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.

Although the subpoena did not meet the above time requirements, the PHC order permitted the subpoena to be issued on March 15, 2021. Corona-Norco was also on notice of the specified exhibits as far back as Student's January 27, 2021 PHC statement and granted an opportunity to object. Therefore, under the circumstances, the subpoena was timely served.

## REASONABLE NECESSITY FOR THE RECORDS

Corona-Norco argues that the subpoena duces tecum should be quashed because it 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.)

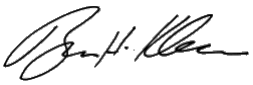
Corona-Norco also contends that the subpoena is overly broad. The subpoena requests documents for time periods not covered by Student's complaint or in categories unrelated to Student. Student's allegations assert that Corona-Norco failed to provide him a FAPE between March 20, 2020, and December 19, 2020.

The subpoena that was issued failed to comply with the requirement that it be accompanied by a declaration establishing the reasonable necessity for the production of the records. Section 1987.1 of the Code of Civil Procedure provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it. Based upon the discussions with counsel at the PHC, Student provided a sufficient basis for needing the records of Corona-Norco, as set forth below. As such, Corona-Norco's Motion to Quash is granted in part and denied in part.

ORDER

1. Corona Norco's motion to quash Student's subpoena is GRANTED as to Item Numbers 20, 21, 23, 30, and 45 through 49. These categories were either not relevant to the issues presented at the hearing or were overbroad and not related to Student. Moreover, Student had sufficient time to seek either a motion to compel before the PHC of March 15, 2021 or could have made public records requests for these documents.
2. The Motion to Quash is DENIED as to Item Numbers 18, 22, 43, and 44. These categories are sufficiently clear and limited that if they exist, they should be produced by Corona-Norco, and it should not be a burden for the district to produce if they exist. Corona-Norco is required to make a reasonable inquiry and produce those documents by March 30, 2021, unless ordered by the ALJ during the hearing. Corona-Norco is ordered to notify Student's counsel in writing if the documents have already been produced to Student or do not exist.
3. Item Numbers 26-29, 31, and 32 are overbroad and vague as they seek documents that are unrelated to Student. The Motion to Quash is Granted to that extent and to any documents not in Corona-Norco's possession and is modified to be directed only to documents related to Student. Corona-Norco is required to make a reasonable inquiry and produce those documents by

March 30, 2021, unless ordered by the ALJ during the hearing. Corona-Norco is ordered to notify Student's counsel in writing if the documents have already been produced to Student or do not exist.



Brian Krikorian

Administrative Law Judge

Office of Administrative Hearings