BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

GILROY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023110253

ORDER GRANTING MOTION TO QUASH SUBPOENAS

MARCH 21, 2024

On November 7, 2023, Student filed a request for due process naming Gilroy Unified School District as respondent. On December 12, 2023, the Office of Administrative Hearings granted the first continuance in this matter.

On March 15, 2024, Student filed five motions to quash five subpoenas issued by Gilroy Unified School District. As of the date of this Order, Gilroy has not filed any subpoenas with OAH, or any opposition to Student's motions to quash. The following Order is based on Student's motions to quash and the copies of Gilroy's subpoenas included as exhibits therein.

The exhibits to Student's motions to quash indicate that, on March 14, 2024, Gilroy issued subpoenas duces tecum on Jose A. Hernandez, Krystal Hernandez, Dr.

Cheryl Ambler, Amy Baur, and a records subpoena to the Custodian of records at Fusion Academy. Each subpoena sought an extensive list of documents and communications. The subpoenas directed the witnesses to produce documents by April 3, 2024, the first day of hearing in this case, but noted that OAH requires witnesses to upload documents electronically five business days before hearing. Notices to consumer and copies of the respective subpoenas were sent to Student advising Student of the subpoenas directed to Dr. Cheryl Ambler, Amy Baur, and the Custodian of Records at Fusion Academy.

Student objected to the above subpoenas on the grounds that the documents sought were vague and overly broad and that Gilroy failed to establish reasonable necessity for the requested documents. Gilroy did not file an opposition to Student's motions.

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, 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.

REASONABLE NECESSITY FOR THE RECORDS

Student argues that the subpoenas should be quashed because Gilroy failed 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.)

Here, the affidavits supporting Gilroy's subpoenas make only general conclusory and circular statements that the documents sought "are material to the issues of this Action and good cause exists for their production," "are relevant and necessary to the

resolution of this Action," and are of "reasonable necessity… to the following issues set forth in Petitioner's Due Process Complaint." The affidavits fail to explain how the subpoenaed documents are material and relevant.

The subpoenas failed to comply with the requirement that they be accompanied by a declaration establishing reasonable necessity for production of the records. While 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; as no reasonable necessity for production of the records has been established, the subpoena cannot be modified. Accordingly, the other bases upon which Student sought to quash the subpoenas are not analyzed in this Order.

ORDER

1. Student's motions to quash Gilroy's subpoenas duces tecum to Jose A. Hernandez, Krystal Hernandez, Dr. Cheryl Ambler, Amy Baur, and the Custodian of records at Fusion Academy are GRANTED.
2. Counsel for Gilroy shall immediately serve a copy of this Order on the persons subpoenaed.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings