BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

GONZALES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022050181

ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM TO RENEE BRAZIL

JUNE 20, 2022

On May 5, 2022, Parent on behalf of Student filed a request for due process with the Office of Administrative Hearings naming Gonzales Unified School District, referred to as Gonzales. On May 5, 2022, a scheduling order was issued scheduling the case for hearing on June 21, 22 and 23, 2022. The Office of Administrative Hearings is referred to as OAH.

On May 25, 2022, Student issued a subpoena duces tecum on Renee Brazil. The subpoena sought: all evaluations, protocols, interview notes, observation reports, student history documents and communications of any kind related to Brazil's

occupational therapy evaluation of Student; (2) special education service logs for Student for the 2021-2022 school year; and (3) any notes, memoranda, emails or other communications between Gonzales' employees and staff relating to Student's special education services during the 2021-2022 school year.

On June 15, 2022, Gonzales filed a motion to quash the subpoena on the grounds the subpoena is overbroad and Student did not establish a reasonable necessity for the documents. OAH did not receive an opposition from Student.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities 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. 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.

FAILURE TO ESTABLISH REASONABLE NECESSITY FOR THE RECORDS

Gonzales argues 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.)

The subpoena fails to comply with the requirement that it be accompanied by a declaration establishing reasonable necessity for production of the records. Here, the declaration in support of the subpoena states the requested documents are necessary and relevant to Student's case, including whether Gonzales' failed to offer Student a free appropriate education, including appropriate services and placement.

Student generally alleges the requested documents are necessary and relevant to the issues in the complaint but fails to specify in full detail the materiality of the documents sought. On its face the issues raised in Student's complaint should be capable of being addressed by the documents in Student's educational records or by testimony at hearing regarding any occupational evaluation of Student during the 2021-2022 school year. 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 good cause for production of the records has been established, the subpoena cannot be modified.

Accordingly, Student has failed to make a threshold showing the documents requested in the subpoena duces tecum are reasonably necessary for hearing, and Gonzales' motion to quash is therefore granted.

SCOPE OF THE SUBPOENA DUCES TECM

Gonzales contends the subpoena is overly broad as the subpoena duces tecum requests all communications between Gonzales' employees regarding Student. However, as the subpoena duces tecum is quashed due to Student's failure to show reasonable necessity for production, there is no need to address Gonzales' specific objections as to the breadth of the documents sought.

ORDER

1. Student's subpoena duces tecum issued on May 25, 2022 to Renee Brazil is quashed.
2. Counsel for Student shall immediately serve a copy of this Order on Renee Brazil.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings