BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022090313

ORDER DENYING MOTIONS TO QUASH SUBPOENAS AS MOOT DUE TO COMPLAINT AMENDMENT

OCTOBER 26, 2022

On September 12, 2022, Student filed a request for due process naming Monterey Peninsula Unified School District as respondent. That same day, a scheduling order was issued scheduling the case for hearing on November 1, 2, and 3, 2022.

On October 10, 2022, Student issued subpoenas duces tecum on the following witnesses:

1. Luisa San Miguel -Monterey Peninsula Unified School District Special Education Teacher;
2. Kevin O'Haire - Monterey Peninsula Unified School District Case Coordinator;

3. Katie Rivera - Monterey Peninsula Unified School District Special Education Director;
4. Karen Zandakis – Monterey Peninsula Unified School District General Education Teacher;
5. Shannon Cavanaugh Pareno - Monterey Peninsula Unified School District Speech Pathologist; and
6. Eugenie Adams - Monterey Peninsula Unified School District School Psychologist.

All witnesses were instructed by the Subpoena to produce records to the Office of Administrative Hearings on November 1, 2022 for a hearing beginning November 1, 2022.

Between October 11 and October 17, 2022, Monterey Peninsula filed motions to quash the subpoenas on a number of grounds. On October 20, 2022, Student's motion to amend the complaint in this action was granted. All timelines in the case were reset as of October 20, 2022 and a new date for hearing was scheduled. The amended complaint superseded the originally filed complaint.

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).

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.

In this case, the complaint on which the subpoenas were based has been superseded. This renders the subpoenas moot. Additionally, the amended complaint filing resulted in the applicable timelines for the prehearing conference and due process hearing in this matter to be reset. (20 U.S.C. 1415(f)(1)(B); Ed. Code 56502(e).) This also renders the original subpoenas moot, as no hearing is proceeding on November 1, 2022.

ORDER

1. Monterey Peninsula's motions to quash Student's subpoenas to the following parties are denied as MOOT:
    a. Luisa San Miguel -Monterey Peninsula Unified School District Special Education Teacher;
    b. Kevin O'Haire - Monterey Peninsula Unified School District Case Coordinator;
    c. Katie Rivera - Monterey Peninsula Unified School District Special Education Director;

d. Karen Zandakis – Monterey Peninsula Unified School District General Education Teacher;
e. Shannon Cavanaugh Pareno - Monterey Peninsula Unified School District Speech Pathologist; and
f. Eugenie Adams - Monterey Peninsula Unified School District School Psychologist.

2. Counsel for Student shall immediately serve a copy of this order on each of the persons listed in item number 1 (a) through (f) of this order.
3. As the motion to quash is granted due to a procedural issue, no ruling is made regarding Monterey Peninsula's substantive arguments.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings