BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015100813
IRVINE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016030606 ORDER DENYING MOTION TO COMPEL

On October 23, 2015, Student filed a request for Due Process Hearing naming Irvine Unified School District.

On April 18, 2016, District filed a Motion to Compel Identity [sic] of Aide or Aides Serving Student.

Special Education hearings are not formal hearings governed by chapter 5 of the California Administrative Procedure Act. (Govt. C §§11340-11529.) The discovery mechanisms provided by Government Code for formal hearings in §11507.5 to 11507.7 are therefore not available in special education proceedings. In addition, under California Code of Regulations, title 5, section 3089, special education due process hearing procedures are exempted from a number of provisions of the Administrative Procedure Act, including Government Code §11445.60 (disclosure of identity of witnesses under informal hearing procedure) and §11450.05 -30 (subpoena procedures). No prehearing discovery is authorized in special education due process hearings. No precedent supports the granting of discovery in a special education hearing. (See *Shiveley v. Stewart*, 65 Cal.2d 475 (1966): discovery available on a case-by-case basis in administrative actions by analogy to criminal cases where agency is "accuser.")

Prehearing discovery is ordinarily not allowed in special education administrative hearings. Both Student and District are presumed to be in possession of sufficient information to justify their request or defend their position. Sufficient cause must be shown to justify deviation from that practice. Here, District seeks the names of staff members at Creative Behavior Interventions, Inc., who have provided services to Student since the commencement of the 2015-2016 school year. As part of his action, Student seeks

reimbursement for the cost of their services. District asserts that it needs to know the names of the persons providing services so that it may subpoena them for testimony about whether Student's placement and services were appropriate. Without the names of such persons, District is concerned that it will not be able to identify those aides in time to subpoena them to attend the hearing. District asserts that it would otherwise be denied its rights under Education Code Section 56505, subdivision (e)(3)[1] to confront, cross-examine, and compel the attendance of witnesses. District's argument is not persuasive.

District does not bear the burden of proof to show that Student's placement at St. John the Baptist school or his services from Creative Behavior Interventions, Inc., were appropriate. If Student does not put on a case in support of those facts, he will not carry that burden. If he does do so, District will have an opportunity to confront and cross-examine those witnesses. District may compel the attendance of any witnesses it wishes, but has not argued that the persons providing services to Student are necessary witnesses to District's case. District has not shown or argued that Student will be able to justify his placement and services without presenting any witnesses, and any such witnesses would be available for District's cross-examination. If, after the presentation of Student's case, District believes that the Creative Behavior aides are indispensable to its defense, it may request any necessary continuance to secure their attendance.

The request to identify aides who have provided services to Student is denied.

IT IS SO ORDERED.

DATE: April 25, 2016

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings

[1] District's variant citations of Education Code Sections 56505, subdivision (c)(3) and 56505, subdivision (e)(2) are presumably typographical errors.