BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025090479

ORDER GRANTING YMCA OF SILICON VALLEY'S MOTION TO QUASH SUBPOENA TO JENNIFER VIRRUETA

OCTOBER 1, 2025

On September 12, 2025, Parent on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Cupertino Union School District, called Cupertino. On September 15, 2025, OAH issued a scheduling order setting dual hearing dates, including an expedited hearing. The expedited hearing is scheduled for October 7, through 9, 2025.

On September 25, 2025, Student issued a subpoena to give videoconference testimony under oath to Jennifer Virrueta.

On September 29, 2025, YMCA of Silicon Valley, called YMCA, filed a motion to quash subpoena on the grounds it was improperly served. YMCA's motion to quash

was supported by declarations under penalty of perjury by Chief Administrative and Strategy Officer for YMCA Karla Jessup, Assistant Site Director Jennifer Virrueta, and YMCA's attorney Erin Frazor. Virrueta and Jessup declared they did not receive the subpoena by personal service and did not consent to electronic service. Attorney Frazor verified that YMCA did not confirm or agree to electronic service of subpoenas in this matter.

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).) California Code of Regulations, title 5, section 3082, subdivision (c)(2), states, "[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)."

OAH requires parties to comply with procedures described in the California Code of Civil Procedure. California Code of Civil Procedure sections 1985 and 1987 govern the issuance of subpoenas. In accordance with the California Code of Civil Procedure, OAH allows parties to issue subpoenas to witnesses to require their attendance at hearing. To secure the attendance of a nonparty witness to a hearing, a party must serve that witness with a subpoena. (Code Civ. Proc., § 1985, subd. (a).)

Nonparty witnesses must be personally served with a subpoena. (Code Civ. Proc., §§ 1985, subd. (a), 1987, subd. (a); *In Re Adams* (1980) 108 Cal.App.3d 685, 687-695 (service of subpoena on witness is only way to exercise jurisdiction over a witness).) Service on the nonparty's attorney does not confer jurisdiction over the nonparty. (Code Civ. Proc., § 1987, subd. (a).) In some cases, the person receiving the subpoena

may agree to accept service by an overnight delivery service such as FED-X or UPS, electronic mail, or authorize their attorney to accept service on their behalf. The party issuing and serving the subpoena is responsible for determining a service method that complies with California law. OAH's website contains information about how to serve a subpoena. The link for OAH's Self-Help page for serving subpoenas is: OAH/Case-Types/Special-Education/Self-Help/Subpoenas.

YMCA demonstrated that the subpoena issued to Jennifer Virrueta was not properly served. Therefore, the subpoena is quashed.

ORDER

1. YMCA's motion to quash Student's subpoena to Jennifer Virrueta is granted.
2. Student shall immediately serve a copy of this order on Jennifer Virrueta .

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings