BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ANAHEIM ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2020120264

# ORDER DENYING MOTION TO QUASH SUBPOENA

FEBRUARY 26, 2021

On December 7, 2020, Parent on Student's behalf filed a request for due process naming Anaheim Elementary School District. On December 7, 2020, Anaheim Elementary filed and served a Notice of Representation naming its attorney of record. On December 8, 2020, the Office of Administrative Hearings, called OAH, issued a scheduling order scheduling the case for hearing. On December 17, 2020, Anaheim Elementary, through its attorney, filed a response to Student's complaint. On the same date, OAH issued an Order granting the parties' request for mediation and continuance of the due process hearing. The hearing is scheduled for March 9, 10, and 11, 2021.

On January 7, 2021, OAH issued an Order of No Action, which directed Parent on Student's behalf to serve on the attorney for Anaheim Elementary a copy of any document submitted to OAH. The Order regarding service remains in effect, as

confirmed in an order dated February 3, 2021. The February 3, 2021 Order noted that continued failure to comply may subject Parent to sanctions. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].)

Anaheim Elementary issued two Notices to Consumer and subpoena duces tecum, first on January 26, 2021 directed to Jason Berry, and then on February 16, 2021 directed to DrSays.com. Anaheim sent copies of the subpoenas to Student with the notices to consumer. The subpoenas sought Student's documents relating to Student's medical conditions since December 1, 2020, that could have an impact on Student's ability to participate in in-person instruction or in-person assessment by Anaheim Elementary.

On February 23, 2021, Student filed a response to "District's Request for Protected Health Information" and an "Objection to AESD and Request to Quash the Subpoena." Both will be deemed a Motion to Quash the subpoenas described above.

However, again in contravention of the January 7, 2021, and February 3, 2021 Orders, Parent failed to serve Anaheim Elementary with either document through its attorney. Instead, Student's proofs of service on the Motions to Quash note that Parent served Anaheim Elementary only through its special education director Kristin Cinco.

Student's Motions to Quash are denied for failure to properly serve Anaheim Elementary, without addressing their merits. Further, if Student fails again to comply with previous orders to properly serve Anaheim with any document filed with OAH, OAH will issue an Order to Show Cause why OAH should not impose sanctions against Student for failure to comply with OAH Orders.

IT IS SO ORDERED.

*Adrienne L. Krikorian*

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings