BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS, RIALTO UNIFIED SCHOOL DISTRICT, and COLTON JOINT UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015060423 ORDER DENYING STUDENT'S MOTION TO COMPEL RESPONDENTS TO PRODUCE EDUCATIONAL RECORDS

On May 21, 2015, Student filed a request for due process hearing, naming respondents San Bernardino County Superintendent of Schools, Rialto Unified School District, and Colton Joint Unified School District. On July 8, 2015, attorney Tania L. Whiteleather filed a Notice of Representation of Student. On August 6, 2015, Student's attorney filed a Motion for an Order Compelling Respondents to Produce Student's Educational Records, with the Declaration of Peter Attwood, an educational advocate.

On August 11, 2015, attorney Deborah R. G. Cesario filed Respondents' Opposition to Student's motion, with exhibits. Respondents also submitted Declarations from Laura Chism (Program Manager for East Valley Special Education Local Plan Area) and Janet Nickell (Pupil Personnel Services Director for Colton).

APPLICABLE LAW

Under the Individuals with Disabilities Act, parents with a child with a disability are entitled to examine all educational records relating to their child. (20 U.S.C. § 1232(g)(1)(A); Ed. Code, § 56404.) Educational records are defined as those records which are personally identifiable to the student and maintained by an educational agency. (20 U.S.C § 1232(a)(4)(A); Ed. Code, § 56504.) Parents' due process hearing rights include the right to examine pupil records pursuant to Education Code, section 56504. (Ed. Code, § 56501(b)(3).)

Neither the IDEA nor California law provides for prehearing discovery in a due process hearing. Rather, a party to a due process hearing has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56506, subd. (d)(2) and (3).) Further, at least five business days prior to the hearing, the parties have the right to be provided with a copy of all documents and a list of all witnesses

and their general area of testimony the parties intend to present at hearing. (Ed. Code, § 56505, subd. (e).)

DISCUSSION

Here, both Student and Respondents refer to communications between Student's representatives (Mr. Attwood and Ms. Whiteleather) and various representatives of the Respondents, from November 2014 to the present, regarding Parents' request for Student's records. In her August 5, 2015 letter, Ms. Whiteleather asserted that Respondents' prior production of records failed to include all of Student's records. In response to Ms. Whiteleather's assertion, Respondents' counsel, Ms. Chism, and Ms. Nickell made additional searches and inquiries .

The various emails and letters acknowledge that Rialto previously provided Parents all records in its possession. Ms. Chism included, as part of her declaration, printouts from the San Bernardino County Superintendent of Schools that indicated Student had no record of disciplinary or student offenses, though such printout would not necessarily have been part of Student's records; otherwise, the San Bernardino County Superintendent had no additional records. Similarly, Ms. Nickell stated that Colton had no records other than those Colton had already produced.

Accordingly, the motion is denied because Respondents San Bernardino County Superintendent and Colton assert, under penalty of perjury, that they have produced all of Student's records in their possession. An order to produce under the facts presented in this motion would serve no purpose. This order is not a determination of whether the educational records maintained by the Respondents complied with state and federal requirements.

DATE: August 12, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings