BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120471

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL DISTRICT TO PRODUCE CONTACT INFORMATION OF DISTRICT CONTROLLED WITNESSES, DENYING SANCTIONS

JUNE 4, 2020

On May 26, 2020, Student filed a motion to compel the production of contact information of school district controlled witnesses for hearing. Student seeks the contact information to subpoena witnesses for the due process hearing in this matter. On May 29, 2020, Long Beach Unified School District, called Long Beach, file opposition and a request for sanctions. On June 1, 2020, Student replied. On June 3, 2020, Student filed opposition to the motion for sanctions.

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).)

California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing. That regulation states that the hearing officer has the right to issue subpoenas and subpoenas duces tecum upon a showing of reasonable necessity by a party.

In the absence of regulations pertaining to the details of subpoena processes in administrative hearings, the Office of Administrative Hearings, called OAH, requires parties to comply with procedures described in California Civil Code. California Code of Civil Procedure section 1985 governs the issuance of subpoenas, and in accordance with it, OAH allows attorneys to issue subpoenas to witnesses to require their attendance at hearing, and for documents. There is no set rule for timeliness of service of subpoenas but must be served in time to allow a reasonable time for preparation and travel. (Code Civ. Proc. §1987 subd. (a).) A subpoena for the attendance of a witness or documents must also meet the good cause requirement by a factual showing of why the testimony and/or production of records are material and relevant to the litigated issues. (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.)

DISCUSSION

Here, Student seeks the production of Long Beach employee addresses who are witnesses for the upcoming July 14, 2020 due process hearing, in order to subpoena their attendance. Student contends that on May 6, 2020, counsel for Long Beach, agreed to provide the information but has not.

Student requests the information by June 5, 2020, because staff changes may occur or staff locations may change after the school year ends. Student argues that Long Beach staff have no obligation to communicate with the school district after the end of the school year, and she may lose the means to locate witnesses if the addresses are not produced prior to that time. Further, Student argues that the school district should not be able to dictate when the addresses should be produced and how much time is needed for Student's counsel to prepare and serve subpoenas on witnesses, because it is unknown if it will be sufficient time to successfully subpoena them for hearing.

Long Beach concedes that it is obligated to provide the last known addresses of its employees under its control but does not agree to provide them by June 5, 2020, as requested. On May 21, 2020, Long Beach agreed to provide addresses after the May 29, 2020 mediation, with ample time to subpoena witnesses, but with no specific date of disclosure. Long Beach argues that there is no authority requiring a school district to provide the information five or six weeks before a hearing date. Further, Long Beach will not provide any employee addresses for witnesses that fall outside of the statute of limitations period because counsel believes it is not a legally sound argument. Additionally, some of the witnesses included in Student's motion are not Long Beach employees, and it has no control over them.

Long Beach contends that the regular OAH practice is that the availability of witnesses takes place during the prehearing conference and an order to provide the last known addresses is part of the order following prehearing conference. This is done because the witness list is finalized by this stage, and staff addresses are highly protected and provided when necessary. Long Beach argues that the addresses will be provided to Student's counsel when appropriate but gives no specific date or timeframe. Long Beach additionally requests sanctions against Student's counsel for bringing a motion in bad faith and as an effort to harass it.

Student's motion for the addresses of Long Beach controlled employees is reasonable. Under the circumstances with COVID-19 and the issues surrounding the real possibilities of difficulty serving witnesses during this time period, Student established the request at this time is reasonable. Further, district employees may be more difficult to reach and locate after the school year is over, so Student's counsel should have the ability to prepare her case and subpoena witnesses as she sees fit so long as the request is reasonable.

Long Beach must also produce all district employee witness addresses that are believed to be outside of the statute of limitations. The statute of limitations determination is made by the administrative law judge at hearing. This is accomplished in various ways. At times, the administrative law judge will require a phased due process hearing where evidence is submitted up front regarding the statute of limitations, and a ruling made before the substantive portion of the hearing is heard. On other occasions, an administrative law judge will hear the case in its entirety and publish the statute of limitations determination in the decision. Either way, the witness information is relevant to the due process hearing until a determination is made by the administrative law judge during the hearing or afterward. Thus, providing the witness addresses to

Student's counsel is reasonable so that she can prepare her case and timely subpoena witnesses.

ORDER

1. Student's motion to compel addresses for district controlled witnessed is GRANTED. Counsel for Long Beach can agree to accept service on behalf of district controlled employees. If not, Long Beach much produce the addresses of the district controlled witnesses without delay, including district controlled witnesses outside of the statute of limitations.

2. To the extent that Student's motion requests addresses of witnesses not in the control of Long Beach, it is DENIED.

3. The request for sanctions by Long Beach is DENIED.

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Cynthia Fritz
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Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings