BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019100201

ORDER DENYING MOTION FOR DISCOVERY

On October 2, 2019, Student filed a request for a due process hearing naming Poway Unified School District. On October 15, 2019, Student issued a subpoena duces tecum on Poway seeking the following records:

1. Development of Student's 7th grade or 2019/2020 Individualized Educational Program
2. 2019 Triennial Assessment
3. Educational Records received from Solana Beach School District
4. Poway/Solana Beach transition activities and meetings (2nd request)

Student specified in the subpoena duces tecum that the records included but where not limited to:

- Any electronic communications between administrators, teachers, school staff, district staff

- Emails, text messages, instant messages or similar electronic communication
- Correspondence
- Notes
- Observations
- Behavior charts
- Behavior intervention plans
- Raw data regarding student's behavior
- Correspondence from/to the district to outside agencies and schools
- Audio
- Video recordings

Student added that the subpoenaed records should be made available before the hearing date so that Student could review the facts.

District has not filed a Motion to Quash Student's subpoena duces tecum.

On October 17, 2019, Student filed a Motion for Discovery requesting the documents listed above. Student seeks an Order compelling production of the documents prior to the Prehearing Conference scheduled for November 18, 2019.

On October 21, 2019, Poway filed an Opposition to Student's Motion for Discovery on the basis that special education hearings do not allow prehearing discovery of any kind and that Student's Motion seeks records the District has no legal obligation to produce.

On October 25, 2019, Student filed a response to Poway's Opposition. In his response Student clarified that he was seeking a specific educational record, an audio

recording of a meeting, that Poway allegedly had not produced within five business days of Student's request to Poway for Student's educational records.

APPLICABLE LAW

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (20 U.S.C. § 1400 et seq.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

Education Code, section 56505, subdivision (a), provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing procedures].)

While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. A subpoena duces tecum may not be used to compel the production of documents prior to the first day of hearing. Pre-hearing discovery in special education

cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District,* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).) Beyond these limited rules, parties do not have the right to discovery in special education due process hearings under the IDEA.

Student has no statutory right to prehearing discovery. If Student contends that Poway violated Parents' procedural rights by failing to comply with Education Code, section 56504, Student may amend the complaint to allege the procedural violation. Student's Motion for Discovery is denied.

IT IS SO ORDERED.

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Cararea Lucier
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DATED: October 28, 2019

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings