BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016060613
v.	ORDER GRANTING IN PART AND DENYING IN PART DISTRICT'S MOTION IN LIMINE AND MOTION TO QUASH
TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.	

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on June 6, 2016, naming Temecula Valley Unified School District. On July 14, 2016, Student filed an amended due process hearing request. Student's amended complaint contends that District denied her a free appropriate public education in her January 2013 and January 2014 individualized education programs by failing to offer appropriate goals, transition services and transition planning (Issues 1 and 2). Student also asserted District denied Student a FAPE by failing to hold an IEP team meeting to discuss Student's summary of performance (Issue 3), and provide prior written notice before exiting Student from special education (Issue 4). Student also claimed that District improperly exited her from special education at the end of the 2013-2014 school year (Issue 5). In addition, Student alleged that the statute of limitations was tolled due to several District misrepresentations, as well as District's failure to provide Parent and Student with prior written notice before exiting Student from special education.

OAH bifurcated the hearing during the September 9, 2016 prehearing conference. Phase One of the bifurcated matter was heard on September 28 and 29, and October 4 and 5, 2016. The issue determined in Phase One was whether Student's Issues 1 through 5 were barred by the statute of limitations, and which of Student's Issues 1 through 5 would proceed to adjudication in Phase Two.

On November 28, 2016, the ALJ issued an Order ruling as follows: Issues 1 and 2 are barred in their entirety, by the two-year statute of limitations. Issues 1 and 2 were dismissed. Issues 3 and 4 were dismissed as to any claim arising prior to June 4, 2014, which are barred by the statute of limitations. The statute of limitations did not bar Issue 5. The ALJ ordered that the matter proceed to Phase Two on Issues 3 and 4 (limited as to claims arising on or between June 4, 2014 and June 6, 2014 only), and on Issue 5.

On December 9, 2016, District filed a motion in limine and motion to quash subpoenas served by Student regarding Phase Two, seeking to preclude certain documents and witnesses from testifying in Phase Two on the grounds such evidence and witness testimony is not relevant to the Phase Two issues.

At a prehearing conference on December 12, 2016, Student was ordered to file her opposition to the motions by December 14, 2016. The parties were ordered to meet and confer and file supplemental briefs, and advised that District's motions would be addressed at an additional prehearing conference to be held on February 10, 2017.

On December 14, 2016, Student filed her opposition to District's motions. On January 20, 2017, the parties filed supplemental briefs regarding District's motions. The matter was argued at the February 10, 2017 prehearing conference.

APPLICABLE LAW AND DISCUSSION

Motion in Limine

Evidence Code Section 350 states, "No evidence is admissible except relevant evidence." Relevant evidence is defined as evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Any relevant evidence shall be admitted if it is the sort of evidence on which responsible person are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or stature rule which might make improper the admission of the evidence over objections in civil action. (Govt. Code §11513 (c).) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Govt. Code §11513 (f).)

Education Code section 56505.1, subd. (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

Here, District has premised its motion on Student's December 2016 prehearing conference statement which has since been superseded by Student's fourth amended prehearing conference statement filed on February 9, 2017. The fourth amended prehearing conference statement is substantially different than the amended prehearing conference statement upon which District's motion is based. Student's latest exhibit list is entirely new and District has failed to either attach the exhibits it seeks to bar or specifically address and describe each exhibit it is attempting to preclude. District has also improperly attempted to exclude exhibits which have already been admitted into evidence during Phase One. Student's witness list has also been revised; new witnesses have been added and new areas of testimony are described for each of the witnesses previously listed. District has failed to adequately or specifically address Student's revisions, and as such, District has failed to make an adequate showing as to all of the witnesses it seeks to exclude from testifying during Phase Two.

Notwithstanding District's failure to specifically address each exhibit it seeks to exclude or address each topic of witness testimony listed in Student's latest prehearing conference statement, Student's papers demonstrate that Student is attempting to contest in Phase Two, many of the same matters previously litigated in Phase One. During Phase One, Student contended that the two-year statute of limitations did not bar Student's claims because District misrepresented Student's status to graduate at and prior to the January 2014 IEP, that Student did not satisfy the Algebra I or CASHEE graduation requirements, that Student was not doing her own work, that her grades were modified or inflated or based upon a modified curriculum, and all of this was concealed from Parent and Student. Student litigated these claims during Phase One and was given the opportunity to present witnesses and other evidence to prove her contentions. Student failed to prove any of these issues during Phase One, and to permit Student to re-litigate these issues in Phase Two is tantamount to an attempt to have the ALJ reconsider the matters decided as part of the November 28, 2016 Order.

Student had the opportunity to, and did, present evidence during Phase One concerning the following issues: that Student was not on track to graduate prior to or at the January 2014 IEP team meetings, that Student did not satisfy the Algebra I and California Exit Exam graduation requirements, that Student's grades were modified or inflated or based upon a modified curriculum or that Student was not doing her own work. Parent, Student and Ms. Cooper were already questioned about these issues. Each of the additional witnesses Student now proffers as having testimony relevant to these issues could have been called as witnesses in Phase One. Similarly, any additional documentary evidence supporting Student's claims on these issues could have been introduced during Phase One. Student had adequate time to present such evidence in Phase One given the issues to be heard and the complexity of the facts to be proven. Student chose not to present such additional evidence or call such additional witnesses on these issues during Phase One, and Student is precluded from now doing so during Phase Two. Since the ALJ has already made findings on these and other issues at the conclusion of Phase One, further evidence at this point in the proceedings on these issues is irrelevant and/or will necessitate an undue consumption of time.

District's motion is granted, in part. Student is precluded from eliciting testimony or offering evidence during Phase Two to prove that Student was not on track to graduate prior to or as of the January 2014 IEP team meetings, that Student did not satisfy the Algebra I and California Exit Exam graduation requirements, that Student's grades were modified or inflated or based upon a modified curriculum, or that Student was not doing her own work. Student is also precluded from re-litigating any other matter already determined in Phase One, including the date Student was exited from special education, and Student shall not question Parent, Student or Ms. Cooper about any matter upon which they were previously questioned during Phase One. District's motion is otherwise denied without prejudice.

Motion to Quash

The Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) 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).) In special education proceedings in California, "[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)." (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2).)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, OAH relies by analogy on the relevant portions of Code of Civil Procedure. Code of Civil Procedure section 1987.1 provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

District seeks an order quashing the December 1, 2016 subpoenas seeking to compel the testimony of Student's ninth grade teacher, Ms. Julianne Dickson and Student's one-to-one aide, Ms. Wendy Ellis Smith, on the grounds that they have not been identified by Student has having information relevant to the Phase Two issues. District also moves to quash the subpoenas duces tecum dated December 1, 2016 seeking the production of records from Student's teachers and District's custodian of records to the extent such records are not relevant to Phase Two issues.

Student contends District's motion is procedurally defective and that District has failed to provide specific arguments as to why each individual or document should be excluded. Student claims that the testimony of Ms. Dickson and Ms. Ellis Smith and the documents requested pursuant to the subpoenas duces tecum are relevant to whether accommodations and modifications were identified in Student's IEP's and consented to by Parent, and whether Student met the requirements for a diploma and was properly exited from special education.

Here, as with District's motion in limine, District has premised its motion to quash the subpoenas on Student's outdated prehearing conference statement. Even so, it is clear from Student's papers that Student is attempting to re-litigate through the testimony of Ms. Dickson the same matters previously ruled upon in Phase One.[1] Any further evidence on

[1] Ms. Dickson was Student's ninth grade teacher and any testimony from her as to whether Student's grades were modified or inflated or based upon a modified curriculum, or whether Student was meeting graduation requirements prior to the January 2014 IEP team meetings was already ruled upon.

these matters during that time period is barred by the ALJ's ruling on District's motion in limine. District's motion to quash is granted as to Ms. Dickson.

With respect to Ms. Ellis Smith, District's motion to quash is denied because Ms. Ellis Smith has been listed as witness to other events during Student's senior year pertaining to the Phase Two issues. However, Ms. Ellis Smith's testimony at hearing will be limited to the very narrow issues to be determined in Phase Two.

With regard to the documents sought by the subpoenas duces tecum, District has failed to identify which of the documents listed in the subpoenas duces tecum it contends are irrelevant or explain why they are not relevant to the Phase Two issues, and for these reasons District's motion is denied.

IT IS SO ORDERED.

DATE: February 15, 2017

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings