BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

YUCAIPA-CALIMESA JOINT UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2019100687

ORDER GRANTING MOTION TO QUASH SUBPOENA

On October 17, 2019, Parent on behalf of Student filed a request for due process naming Yucaipa-Calimesa Joint Union School District. The Office of Administrative Hearings, referred to as OAH, set the matter for hearing on December 10, 11, and 12, 2019.

On November 17, 2019, Yucaipa-Calimesa issued a subpoena duces tecum on Parent. On November 22, 2019, Parent on behalf of Student filed a motion to quash the subpoena, arguing that the subpoena improperly seeks pre-hearing discovery. On November 25, 2019, Yucaipa-Calimesa opposed the motion on grounds set forth below.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act, referred to as the IDEA, 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).)

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 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 the 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.

NO RIGHT TO PREHEARING DISCOVERY

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. (20 U.S.C. § 1400 et seq.) 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. 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].)

The use of subpoenas duces tecum in special education hearings must be consistent with the legislative and regulatory framework of these proceedings. 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 five business days before the date of the first day of the hearing. (Ed. Code, 56505(e)(7).)

DISCUSSION

Yucaipa-Calimesa's subpoena duces tecum directs Parent to produce records related to Student's attendance at Arrowhead Christian Academy. The subpoena provides inconsistent instructions in that it requests Parent to appear at the hearing, as well as to produce the documents on December 5, 2019, which is five days before the first day of the hearing. The subpoena indicates that if early production occurs, Parent does not have to attend the hearing on December 10, 2019.

Yucaipa-Calimesa contends that the subpoena duces tecum provides for early production as an option and that Parent may produce the documents on the first day of the hearing. However, the subpoena is ambiguous. It can be read to require Student to produce the documents before the first day of the hearing. Because of this ambiguity, the subpoena violates the provisions of the IDEA and the California Education Code related to pre-hearing discovery. Accordingly, Student's motion to quash is granted.

IT IS SO ORDERED

DATED: November 25, 2019

DocuSigned by:

Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings