BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2013100405
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2013101109 ORDER DENYING DISTRICT'S MOTION TO QUASH SUBPOENA FOR TESTIMONY WITHOUT PREJUDICE

These consolidated matters are set for a due process hearing beginning on February 25, 2014. On February21, 2014, Sacramento City Unified School District (District) filed with the Office of Administrative Hearings (OAH) a motion to quash a subpoena issued by Student and dated February 20, 2014. The subpoena seeks to compel the testimony of Jeff Cuneo, a member of District's Board of Education. On February 26, 2014, Student filed an opposition to the motion. On the same date, District filed a reply.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities Education Improvement Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).) California Code of Regulations, title 5, section 3082, subdivision (c)(2) sets forth the right of the parties in a special education hearing to compel the attendance of witnesses. It provides in pertinent part that, "[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)." California Code of Regulations, title 5, section 3089, specifies that the subpoena provisions of the Administrative Procedure Act (APA), found in California Government Code sections 11450.05 to 11450.30, do not apply in special education due process hearing matters. Special education law does not specifically address whether or how a subpoena may be quashed. Since special education law is silent on these

topics, and the APA does not directly apply, OAH looks to the relevant portions of the APA and the California Code of Civil Procedure as guidance.

DISCUSSION AND ORDER

District's motion to quash Student's motion for Mr. Cuneo's testimony is supported by a copy of Student's subpoena. The motion is based on the grounds that Mr. Cuneo's testimony is subject to the deliberative process privilege, the Brown Act closed session privilege, the attorney-client privilege, and to certain protections afforded a governmental official with no personal knowledge of Student's circumstances. While District argues that Mr. Cuneo's position, role, and knowledge compel quashing Student's subpoena, District has presented no evidence to support those arguments. On that basis alone, the motion must be denied without prejudice at this time.

To renew this motion at hearing, District need not file any further written motion or argument and the present motion will be reinstated in full, along with Student's opposition.

DATE: February 26, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings