BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015020031
v.	ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING JOINT REQUEST TO UNEXPEDITE AND VACATING EXPEDITED HEARING DATES
DAVIS JOINT UNIFIED SCHOOL DISTRICT.	

On February 20, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney Tania Whiteleather appeared on Student's behalf. Attorney Elizabeth Rho-Ng appeared on Davis Joint Unified School District's behalf and was accompanied by attorney Jennifer Baldassari. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following orders:

Joint Request to Unexpedite Hearing and Vacate Expedited Hearing Dates

On January 30, 2015, Student filed a due process hearing request naming Davis. The complaint contained four issues, but no request that any of the issues be identified as expedited issues for hearing. Student did allege facts, however, that could be construed as triggering the expedited hearing provisions of the Individuals With Disabilities Education Act and corresponding State law. Accordingly, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. On February 4, 2015, Davis filed a motion to unexpedite this matter and vacate the expedited dates. On February 9, 2015, Administrative Law Judge June Lehrman, having not received a written response from Student,[1] denied Davis's motion because the facts as stated in the complaint included some assertions regarding disagreements with decisions made at manifestation determination meetings. On February 17, 2015, Student filed a PHC statement asserting issues for hearing that, on their face, did not directly allege expedited issues and also submitted requested remedies that do not naturally flow from issues typically requested in an expedited hearing.

At the outset of the PHC, Ms. Whiteleather was asked to clarify the specific issues she intended to litigate in the expedited portion of the due process hearing. Ms. Whiteleather

[1] Student's response was received, however, not prior to the ruling on the motion to unexpedite was issued.

stated that she had not requested an expedited hearing. She further clarified that although some facts alleged in the complaint may relate to disciplinary issues, she intended to raise issues regarding a denial of a free appropriate public education as opposed to raising issues specifically triggering the disciplinary provisions of the IDEA. After the discussion on the record, the parties made a joint request to unexpedite the due process hearing and vacate the expedited hearing dates.

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request an is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).)

Ms. Whiteleather made clear that no issues were raised in the complaint regarding a decision by Davis to change Student's educational placement or disagreeing with a manifestation determination triggering the disciplinary provision of the IDEA. In light of the clarification of the issues provided by the parties, the joint motion to unexpedite the due process hearing and vacate the expedited hearing dates was granted.

Motion to Quash Subpoena Duces Tecum

On February 17, 2015, Student served an SDT, via email, to Davis' attorney of record seeking disciplinary records for Student for the 2013-2014 school year. On February 19, 2015, Davis filed a motion to quash the SDT asserting that it was untimely, was improperly served, served on an improper party (Davis' attorney of record), and was defective because it failed to show reasonable necessity for the belated request. Student's counsel orally opposed the motion asserting that, despite the procedural defects, her client was entitled to the records under the Education Code and she had no other means available to obtain the requested records.

A party to a due process hearing under the 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 an SDT may be quashed.

In ruling on a motion to quash an SDT, OAH uses as guidance and relies by analogy on the relevant portions of the APA and the California 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.

Student acknowledged that the specific procedural requirements for serving an STD were not followed in this case. Accordingly, Davis's motion to quash the subpoena was granted. However, Davis was ordered to produce the requested documents listed in the SDT under Education Code section 56504, because the request is a request for Student records.

ORDER

1. The parties' joint motion to unexpedite this matter is granted.

2. The expedited hearing dates set in this matter are vacated.

3. All dates in the unexpedited portion of this hearing are to remain on calendar.

4. Davis's motion to quash Student's SDT for disciplinary records is granted.

5. Student's request for disciplinary records for the 213-2014 school year contained in the SDT is construed as a request for student records under Education Code section 56504 as of the date of this order.

IT IS SO ORDERED.

DATE: February 20, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings