BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ATWATER ELEMENTARY SCHOOL DISTRICT and MERCED COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2014010194 ORDER RE: PROTECTION OF VIDEO TAPES

On January 3, 2014, Student filed a due process complaint naming the Atwater Elementary School District (District) and the Merced County Office of Education. (The two entities are collectively referred to here as "the Districts.") On January 3, 2014, simultaneous with the filing of his complaint, Student served a subpoena duces tecum (subpoena) on the District's Superintendent, requesting production of any video tapes of the school bus rides taken by Student during October, November, and December, 2012. Student contended that the video tapes were necessary to prove his allegations that the Districts denied him a free appropriate public education by failing to provide him with safe bus transportation to school. The subpoena was returnable to Student's attorneys on or before January 10, 2014.

On January 21, 2014, the Districts filed a motion to quash the subpoena. Student filed an opposition to the motion on January 23, 2014. The Districts filed a response to Student's opposition on January 29, 2014.

The undersigned administrative law judge (ALJ) issued an Order on February 3, 2014, denying the Districts' motion to quash the subpoena. The ALJ issued the following Order:

1. Within five business days of the issuance of this Order, the Districts shall notify the parents of any child who may have bullied or assaulted Student that the video tape of the incident or incidents has been subpoenaed in a due process case. The District is ordered to refrain from identifying Student or the fact that Student is the petitioner in a due process case.

2. Within 10 business days of the issuance of this Order, the Districts shall provide OAH with a copy of the four video tapes in the Districts' possession for in camera review.

3. If no parent of any other student who appears on the video tapes files an objection to the release of the video tapes by February 17, 2014, the Districts shall immediately provide Student's attorneys with a copy of the four videos, but in no case later than close of business on February 20, 2014.

4. If the parent of any other student who appears on the video tapes files an objection to production of the tapes, the ALJ assigned to the prehearing conference in this case shall decide whether the tapes shall be produced to Student's attorneys.

5. If the video tapes are produced to Student's attorneys, the tapes may not be disseminated or viewed by anyone other than Student's legal representatives, Student's experts, or Student's parents. The tapes may not be used for any proceeding other than the instant due process case.

On February 7, 2014, the Districts filed a pleading entitled "Notification Regarding objection to Production of Student Records re: OAH Order Denying Motion to Quash Suboena Duces Tecum." In their pleading, the Districts informed that they had contacted the parents of other children riding on the bus and that one parent had signed an objection to production of her child's educational records, presumably including the video tapes. Although the Districts provided a copy of the objection as an exhibit to their filing, the Districts stated that it was their understanding that none of the four videos depict any instances of bullying or assaultive behavior directed at Student by other children riding the bus. The Districts also stated that based upon the objection, they have not provided Student with a copy of the videos. The Districts have asked OAH for further direction.

The Order issued by the undersigned on February 3, 2014, directed the Districts to provide copies of the videos to OAH for in camera review within 10 days of the issuance of that Order. If the Districts have not yet provided copies of the video tapes to OAH, they must immediately do so, and in no case later than February 18, 2014, which is 10 business days from the date the original Order issued. The ALJ assigned to hear this matter may then conduct an in camera review of the tapes to determine if the tapes should be produced to Student.

IT IS SO ORDERED.

DATE: February 11, 2014

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings