BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060557 ORDER DENYING MOTION TO QUASH SUBPOENA DUCES TECUM AS MOOT

Student filed a request for due process (complaint) on June 9, 2017, naming Newport-Mesa Unified School District. Student filed a first amended complaint on July 17, 2017, and a second amended complaint on October 5, 2017. The Office of Administrative Hearings scheduled the hearing on Student's second amended complaint to begin on November 28, 2017.

On November 13, 2017, Student filed a motion to quash a subpoena duces tecum pursuant to a notice to consumer District served on Student that indicated District intended to subpoena records from the private school Student attends or has attended. The private school was to comply with the subpoena by producing the records in person on November 28, 2017, the first day scheduled for the hearing, at the hearing's scheduled location. Student's motion to quash contends that the subpoena failed to provide reasonable necessity for the records requested, was overbroad, and sought documents not relevant to the case.

On November 15, 2017, the parties filed a joint request to set a mediation date and to continue the prehearing conference and due process hearing. OAH granted the parties' request on November 16, 2017. The hearing in this matter is now scheduled to begin on January 23, 2018.

District filed an opposition to Student's motion to quash on November 16, 2017. District contends that its subpoena requests documents relevant to the litigation and which are necessary for it to properly defend against Student's complaint.

APPLICABLE LAW AND DISCUSSION

A party to a due process hearing in California does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulation securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself. Federal law provides for the rights 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).) Both of those subsections relate only to due process hearings, not to any prehearing procedures. There is no right to pre-trial discovery under the Individuals with Disabilities Education Act, the Code of Federal Regulations, or California education statutes or regulations.

Since OAH has granted the parties' motion to continue, hearing is no longer scheduled for November 28, 2017, the date upon which District's subpoena is returnable. District's subpoena is no longer valid as it was returnable the first day of a hearing that has now been continued. Since there is no right to pre-trial discovery, District, if it so chooses, will need to issue a new notice to consumer and subpoena for the new hearing date or dates. Accordingly, Student's motion to quash is moot, and, on that basis is denied.

DATE: November 20, 2017

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Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings