

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT AND VIRTUAL
SCHOOL OF INNOVATION.

OAH CASE NUMBER 2021090231

ORDER DENYING PREHEARING DISCOVERY

SEPTEMBER 22, 2021

On September 8, 2021, Student filed a request for due process naming Corona-Norco Unified School District and Virtual School of Innovation as respondents.

On September 13, 2021, Student served on respondents a Request for Discovery seeking two categories of documents, including minutes or notes of an individualized education program team meeting held on September 3, 2021. The request also sought a PowerPoint presentation presented at that meeting, including various metadata and source data concerning that PowerPoint. Corona-Norco has not filed any response. Nevertheless, for the reasons stated below, because pre-

hearing discovery is not available in special education due process proceedings, the request must be denied.

APPLICABLE LAW

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (20 U.S.C. § 1400 et seq.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at “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).) 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.

In special education proceedings in California, to be produced at the hearing but not prior to it, “[t]he hearing officer shall have the right to issue Subpoenas (orders to appear and give testimony) and Subpoenas Duces Tecum (orders 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).) Therefore, the documents sought may be subpoenaed in time for the documents to be available for the hearing itself, upon a showing of good cause, but not prior to the hearing.

In terms of what is available prior to the hearing, 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. These records may be requested at any time. (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 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).) The documents Student seeks, in this Motion, are not within these limited categories that are available prior to the hearing itself. The motion is therefore denied.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "June Lehrman".

June Lehrman

Administrative Law Judge

Office of Administrative Hearings