

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT,

and

TAMALPAIS UNION HIGH SCHOOL DISTRICT,
OAH CASE NUMBER 2021100290
OAH CASE NUMBER 2021110001

ORDER GRANTING MOTION TO QUASH SUBPOENA

DECEMBER 8, 2021

On October 8, 2021, Student filed a request for due process with the Office of Administrative Hearings, also called OAH, naming Tamalpais Union High School as respondent. On October 28, 2021, Tamalpais filed a request for due process hearing naming Student as respondent. The two cases were consolidated on November 3, 2021. Pursuant to an order granting continuance, the cases were scheduled for hearing December 7, 2021.

On November 17, 2021, Student issued subpoenas *duces tecum*, or SDTs, on nine Tamalpais staff members and all five school board trustees for documents to be produced on December 7, 2021. On November 19, 2021, Tamalpais filed a motion to

quash the subpoenas on the grounds that they were not timely, and that the SDT's issued for documents and testimony from the School Board Trustees sought information that was not relevant to the issues raised in the consolidated cases. No response to the motion to quash was received by OAH.

On November 22, 2021, Tamalpais' motion to amend its complaint was granted along with a continuance, re-scheduling the consolidated cases for hearing on December 28, 29, and 30, 2021. The subpoenas were not reissued.

NO RIGHT TO PREHEARING DISCOVERY

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.

Education Code, section 56505, subdivision (a), provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Department of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and subpoenas duces tecum. These regulations specifically disallow the provisions of the Administrative Procedures Act that provide broader authority for the use of subpoenas in other administrative hearings. (5 Cal. Code Regs., tit. 5, § 3089, [inapplicability of Govt. Code, §§ 11450.05-11450.30 to due process hearing

procedures].) While subpoenas *duces tecum* are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings, which accord prehearing access to only two types of documents: (i) parents have the right to request and receive the pupil's educational records within five business days at any time (Ed. Code § 56504), and (ii) the parties are entitled to receive copies of all the documents the parties intend to use at hearing, not less than five business days prior to the hearing. (Ed. Code § 56505, subd. (e)(7))

Student's subpoena directs the subpoenaed witnesses to produce the subpoenaed records no later than December 7, 2021. As issued, the subpoenas provide for the production of documents 21 days prior to the first day of hearing. Student has no statutory right to pre-hearing discovery. Tamalpais' motion to quash is granted. As the motion to quash is granted due to a procedural defect, no ruling is made regarding Tamalpais' substantive arguments such as reasonable necessity.

ORDER

1. Tamalpais' motion to quash Student's subpoenas *duces tecum* is granted.

Subpoenas to the following witnesses are hereby quashed:

- a. Isaias Franco
- b. Amira Mostafa
- c. Lisa Maibaum
- d. Connor Snow
- e. Kelly Lara
- f. Meredith Hanrahan
- g. Kate Kritz
- h. Sandra Pula
- i. Alysoun Quinby

j. Leslie Harlander

k. Cynthia Roenisch

l. Dan Oppenheim

m. Kevin Saavedra - NOTE: Two identical subpoenas were issued to Kevin Saavedra. They are both quashed.

2. Counsel for Student shall immediately serve a copy of this order on each person subpoenaed.

IT IS SO ORDERED.

Penelope S. Pahl

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Administrative Law Judge

Office of Administrative Hearings