

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ALAMEDA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021110161

ORDER GRANTING MOTION TO COMPEL

MARCH 2, 2022

On November 5, 2021, Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing, naming Alameda Unified School District. On January 11, 2022, OAH granted Student's request to amend the request for due process hearing. On February 9, 2022, OAH continued the prehearing conference to March 14, 2022 and the due process hearing to March 22 through 24, 2022.

On February 22, 2022, Student filed a motion to compel the last known addresses for Sarah Holm and Pamela Kazee so that Student can subpoena them for hearing. Student contends Holm and Kazee are former employees of Alameda Unified as of about June 30, 2021. Student unsuccessfully attempted to locate Hohm and Kazee to subpoena them for hearing. Counsel for the parties met and conferred in December 2021. Alameda Unified's counsel stated it would ask Kazee to appear as a witness. In

January 2022, Student asked counsel for Alameda Unified to provide Kazee's last known address, and in February 2022, Student asked counsel for Alameda Unified to provide Hohm's last known address. Counsel for Alameda Unified did not respond to either request and has failed to provide the address for either witness. On February 9, 2022, the parties exchanged prehearing conference statements where both parties listed Holm and Kazee as potential witnesses, and Student again requested the address for both witnesses. Student argues that Alameda Unified's non-responsiveness prejudices Student's ability to prepare for hearing.

On February 25, 2022, Alameda Unified filed opposition to the motion to compel. Alameda Unified contends it does not have the current address for Kazee, the former Director of Special Education at Alameda Unified who now lives in Florida. It claims that its counsel spoke to Kazee and Kazee has confirmed that she will testify at hearing without being subpoenaed. Alameda Unified contends it never employed Holm and the services she provided were through an agency. It argues it does not have Holm's address but did locate a cell number for her. Alameda Unified's counsel left Holm a message, but she never responded.

A party to a due process hearing under the Individuals with Disabilities in Education Act has the right 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); see also Ed. Code, § 56505, subd. (e).) California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special education hearing to compel the attendance of witnesses at hearing.

An Administrative Law Judge, called ALJ, may take action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030.) Government

Code, section 11425.20 empowers the ALJ to issue protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case.

At the prehearing conference, OAH typically orders that the parties meet and confer to determine which proposed witnesses are school district employees and to identify the witnesses on Student's list that require a subpoena. OAH gives the school district the option of agreeing to accept service of subpoenas for witnesses under the school district's control or providing Student with the witness' most recent contact information. Any contact information provided by the school district is typically the subject of a protective order, limiting its use to issuing subpoenas or for contacting the witness(es) for purposes of attending the hearing, and prohibiting disclosure to any other person(s).

Here, Kazee and Holm are listed as witnesses in both parties' prehearing conference statements. Neither of the witnesses are currently employed by Alameda Unified. Kazee used to be employed by the school district, but now lives in Florida. Kazee has apparently agreed to appear without a subpoena, but it is unclear from Alameda Unified's papers that it is agreeing to produce Kazee without a subpoena. By no later than 10:00 AM on March 14, 2022, Alameda shall provide to Student's counsel in writing Kazee's last known address, telephone and email address to the extent Alameda Unified or its counsel possesses this information, and if certain information is not known, it shall be so specified.

Holm's services were obtained through an agency. Alameda Unified has a cell phone number for Holm and its counsel has left her a message, but she has not yet responded. By no later than 10:00 AM on March 14, 2022, Alameda Unified shall provide to Student's counsel in writing Holm's last known address (specifically, the agency's office address if Holm's home address is not known), telephone (cell number)

and email address to the extent Alameda Unified or its counsel possesses this information, and if certain information is not known, it shall be so specified.

Any contact information provided by Alameda Unified or its counsel shall be used by Student's counsel for the limited purpose of issuing subpoenas or for contacting the witness(es) for purposes of attending the hearing and shall not be disclosed to any other person(s).

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings