

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023120395

ORDER DENYING MOTION TO COMPEL

JANUARY 16, 2024

On January 9, 2024, Student filed with the Office of Administrative Hearings, called OAH, a motion to compel Santa Monica-Malibu Unified School District to produce various education records Student believes Santa Monica-Malibu should have produced pursuant to Student's August 24, 2023, request. On January 12, 2024, Santa Monica-Malibu filed an opposition, contending that it had supplied Student with all education records that exist; Student has filed a complaint with the California Department of Education, called CDE, on this topic and CDE had opened an investigation; Student has issued multiple subpoenas duces tecum to witnesses to produce the same or similar documents, and Student did not have the 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.), called the IDEA. 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 but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

The legislative and regulatory framework of these proceedings afford prehearing access to two types of documents: (1) parents have the right to request and receive the pupil’s education records within five business days at any time (Ed. Code, § 56504), and (2) the parties are entitled to receive copies of all the documents the other party intends to use at hearing not less than five business days prior to the hearing, as well as “all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.” (Ed. Code, § 56505, subd. (e)(7).)

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act, called FERPA, to include “records, files, documents, and other materials” containing information directly related to a student, other than directory information, which “are maintained by an educational agency or institution or by a person acting for such agency or institution.” (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.) Pupil or education records do not include “records of instructional, supervisory, and administrative personnel which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.” (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

Student is requesting an Order from OAH compelling Santa Monica-Malibu to immediately produce documents related to an August 24, 2023, request. A motion to compel is not the appropriate process for obtaining such documents. Student's subpoenas duces tecum, unless properly quashed, request the items on the first date of hearing. Additionally, CDE is investigating the issue and may order Santa Monica-Malibu to take corrective action if they find a compliance violation. Student's motion to compel is denied as it seeks improper prehearing discovery in the matter.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings