BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

KENTFIELD SCHOOL DISTRICT.

OAH CASE NUMBER 2022010393

ORDER DENYING SECOND MOTION TO QUASH SUBPOENAS DUCES TECUM AS UNTIMELY

APRIL 12, 2022

On January 14, 2022, Student filed a request for due process naming Kentfield School District. This matter is currently scheduled for hearing beginning April 19, 2022.

On April 8, 2021, Student issued subpoenas duces tecum on four Kentfield staff, namely, Stephanie Blazek, Jeff DeBoi, Jill Klima, and Raquel Rose.

On April 11, 2022, Kentfield filed a motion to quash the subpoenas on the grounds that they were not timely served. Kentfield argues the subpoenas were required to be served at least 20 days before the date of production. OAH has not received a response from Student at the time of this Order.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act, called IDEA, 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).) There is no right to prehearing discovery in due process proceedings under the IDEA or California state law.

In special education proceedings in California, "[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order 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).) The provisions of the Administrative Procedure Act governing subpoenas and requiring that they be served in accordance with the California Code of Civil Procedure (Gov. Code § 11450.20) do not apply to special education hearings. (Cal. Code Regs., tit. 5, § 3089.)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, OAH relies by analogy on the relevant portions of the Code of Civil Procedure. Code of Civil Procedure section 1987.1 provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

DISCUSSION

Kentfield's sole ground for challenging the subpoenas duces tecum is that they were not served in a timely manner. Kentfield's argument that the subpoenas were required to be served 20 days prior to April 19, 2022, pursuant to Government Code

section 11450.20 is not persuasive. Section 11450.20 does not apply to special education proceedings. OAH procedures for issuance of subpoenas require that subpoenas must be served far enough in advance of the hearing to provide a witness a reasonable amount of notice. (See Cal. Code Civ. Proc. 1987(a.).). While different rules apply for a party seeking to obtain private documents which require a Notice to Consumer, Kentfield does not argue that those rules apply in this instance.

Kentfield also argues it was not provided reasonable notice to produce the subpoenaed documents as its staff are out of the office and on spring recess until April 11, 2022. Kentfield asserts it is required to upload any return on the subpoenas on April 12, 2022, five business days prior to hearing. This is not correct. Parties are required to timely upload all of their proposed exhibits five business days prior to hearing. OAH does require that all subpoenaed documents also be uploaded into its electronic evidence platform Case Center, formerly called CaseLines. However, the subpoenas require the production of documents by the start of hearing on April 19, 2022. While the attorneys will lose access to upload exhibits three business days prior to hearing, all Kentfield staff subject to a subpoena duces tecum in this matter will have access to upload subpoenaed documents into Case Center until the beginning of the hearing on April 19, 2022. Kentfield did not show that the subpoenas should be quashed because they were untimely.

ORDER

Kentfield's motion to quash as untimely Student's April 8, 2022 subpoenas duces tecum to Stephanie Blazek, Jeff DeBoi, Jill Klima, and Raquel Rose is denied.

IT IS SO ORDERED.

Theresa Ravandi

Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings