BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017111058
v.	ORDER DENYING MOTION TO QUASH SUBPOENA FOR TESTIMONY OF MICHELE CAIN
VISTA UNIFIED SCHOOL DISTRICT.	

Parent on behalf of Student filed a request for due process (complaint) with the Office of Administrative Hearings on November 28, 2017, naming Vista Unified School District. Based on the allegations in the complaint, OAH set the matter for dual hearings. The expedited hearing began as scheduled on January 11, 2018, on Student's allegation that District should have held a manifestation determination review prior to moving to expel him for violating District's code of student conduct.[1] One of the witnesses called to testify by Student on January 11, 2018, was Michele Cain, formerly a District Assistant Principal at Student's school.

On the first day of hearing, Student requested that District be ordered to produce emails concerning him. The Administrative Law Judge granted Student's request. District produced the emails to Student on January 12, 2018.

On January 16, 2018, Student served a subpoena for the personal appearance of Ms. Cain. On January 19, 2018, District filed a motion to quash the subpoena. Student filed an opposition to the motion to quash on January 22, 2018.

District argues that further testimony by Ms. Cain is unwarranted because it is not relevant or reasonably necessary for the presentation of Student's case. District states that Ms. Cain already was subject to examination, implying that further examination would be redundant. District contends that Student's declaration in support of the subpoena does not specifically state that the emails it produced to Student would support a reason for recalling Ms. Cain to testify. District also contends that any testimony as to further behavior incidents by Student is not relevant to whether District had a basis of knowledge that Student had a disability.

[1] Student withdrew a second expedited issue prior to the beginning of the expedited hearing.

District's arguments are not persuasive. First, there is no requirement that a subpoena ad testificandum be supported by a declaration. Therefore, it is irrelevant that the declaration accompanying the subpoena to Ms. Cain may be inadequate. Second, additional incidents of misconduct by Student and information that was shared between District teaching staff and District administrators may support Student's contention that District had a basis of knowledge that he had a disability. Or, it may not. Until Ms. Cain testifies, it is premature to make a determination of relevancy as to her testimony. She was the Assistant Principal for a substantial time covered by this case. She was involved in discipline of Student, and she was involved in addressing what she testified was his "at risk" behavior. Whether any of this demonstrates that District was aware of a pattern of conduct that indicated Student had a disability is one of the issues that the Administrative Law Judge must ultimately decide in this case.

For these reasons, further testimony by Ms. Cain is potentially relevant and it is appropriate to recall her. District's motion to quash is denied. As discussed at the telephonic hearing on January 16, 2018, District shall arrange to have Ms. Cain available to testify telephonically at 10:00 a.m. on Friday, January 26, 2018. Student shall provide Ms. Cain with copies of both evidence binders in this case prior to her testimony. If Student intends to refer to or have Ms. Cain address any document not presently included in either party's evidence binder (such as the emails referred to in both party's pleadings) Student shall provide Ms. Cain with copies of the documents along with the binders. Student shall also file copies of the additional documents with OAH no later than 12:00 p.m. on Thursday, January 25, 2018. Student shall number each document as Student's next in order. The telephonic hearing on the expedited issue shall resume as scheduled on January 26, 2018, at 9:30 a.m. The Administrative Law Judge shall initiate the call.

IT IS SO ORDERED.

DATE: January 23, 2018

DocuSigned by:
Darrell Lepkowsky
A228F8201132499...

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings