BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: JULIAN UNION SCHOOL DISTRICT AND HARBOR SPRINGS CHARTER SCHOOL, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017031383 ORDER GRANTING DISTRICT'S AND CHARTER SCHOOL'S MOTION TO QUASH

On March 29, 2017, Harbor Springs Charter School and Julian Union Elementary School District filed a due process hearing request with the Office of Administrative Hearings naming Student. A prehearing conference in this matter was held on April 24, 2017, and this matter is scheduled to go to hearing on May 2, 2017.

On April 21, 2017, Student served notices to appear on several potential witnesses. On April 25, 2017, District and Charter School filed a motion to quash the notices.

On April 27, 2017, OAH issued an order that District and Charter School file copies of the notices to appear to which they object.

On April 27, 2017, District and Charter filed documents in support of the motion.

On April 28, 2017, Student filed an opposition. On May 1, 2017, District and Charter School filed a reply.

APPLICABLE LAW

The California regulations interpreting OAH's authority to compel the attendance of witnesses and production of documents specifically provide that:

> (c) In addition to the rights afforded both parties to the hearing pursuant to Education Code sections 56500, 56501....the parties shall also have the following rights:...
>
> (2) To compel the attendance of witnesses. The 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).

(5 Cal. Code Regs,. § 3082, subd. (c)(2).)

OAH's Special Education Handbook, published on its website at http://www.documents.dgs.ca.gov/oah/SE/SE%20Handbook.pdf, under the heading "How to Prepare for the Hearing," expressly explains that in due process proceedings:

A subpoena is used to require people to provide documents or testimony.

(Office of Administrative Hearings, Special Education Handbook, pp. 38-39.)

The Code of Civil Procedure provides that notice to appear may be used in a civil proceeding to compel the production of a party to the record of any civil action or proceeding, or of a person for whose immediate benefit and action or proceeding is prosecuted or defended or of anyone who is an officer, director or managing agent of any such party or person, and may include a request that the party or person bring with him or her books, documents electronically stored information or other things. (Civ. Proc., § 1987, subds. (b) and (c).) However, OAH does not conduct civil proceedings like the courts or judicial branch, it conducts adjudicative proceedings subject to the Administrative Procedure Act. (See Govt. Code, § 11400.10, 11410.20). The Special Education Division of OAH is a quasi-judicial tribunal that hears administrative disputes between parents of individuals with exceptional needs and local educational agencies (Ed. Code, § 56505, subd. (a)). OAH proceedings are governed not by the Code of Civil Procedure but by the Administrative Procedure Act, with certain exceptions and as supplemented by regulations specifically applicable to special education due process proceedings (See Govt. Code, § 11400.10, 11410.20; 5 Cal. Code Regs. § 3089.)

DISCUSSION

Student served notices to appear and produce documents on several witnesses purported to be district employees, which Student contends is permitted pursuant to Code of Civil procedure, section 1987, subdivisions (b) and (c). District and Charter School contend that the proper procedure for seeking the appearance or production of documents at hearing is through the subpoena and subpoena duces tecum process, with a requisite showing of reasonable necessity for the production of documents.

The regulations expressly applicable to administrative proceedings provide that the attendance of witnesses and the production of documents at hearing shall be compelled by subpoena or subpoena duces tecum upon a showing of reasonable necessity. The procedural

processes of the civil courts, specifically notices to appear, are not applicable to special education due process proceedings. Accordingly, District and Charter School's motion to quash the notices to appear served on potential witnesses to this special education due process hearing is granted.

IT IS SO ORDERED.

DATE: May 1, 2017

DocuSigned by:
Alexa Hohensee
A7D463FF094544B...

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings