BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019060916

ORDER DENYING MOTION TO SUBPOENA DOCUMENTS

On June 20, 2019, Parent on behalf of Student filed a request for due process naming Newport-Mesa Unified School District.

On October 18, 2019, Student filed a motion to subpoena emails documenting individualized education program team meeting discussions from Newport-Mesa. Newport-Mesa filed an opposition asserting that the motion was moot, as it had already provided the requested documents. The opposition was not supported by a sworn declaration.

APPLICABLE LAW

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).)

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).) This requirement mirrors that required by Code of Civil Procedure section 1985, subdivision (b), which requires:

> A copy of an affidavit shall be served with a subpoena duces tecum . . ., showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.

The good cause requirement is met by a factual showing of why the requested documents or things are material and relevant to the litigated issues. (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.)

Pre-hearing discovery in special education cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District,* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

Education Code, section 56504 (Section 56504), provides, in pertinent part, that "[t]he parent shall have the right and opportunity to examine all school records of his or her child *and to receive copies* ... five business days after the request is made by the parent, either orally or in writing." (Emphasis added.)

DISCUSSION

Newport-Mesa's opposition is not supported by a sworn declaration, and therefore does not establish that the requested documents have been produced, or that Student's motion is moot.

However, Student failed to use the procedures set forth in the California Code of Regulations to subpoena the documents sought. The procedure for subpoenaing documents in due process, in addition to the law stated above, is explained at the OAH Special Education website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help/Subpoenas, under the link for "Self-Help Information for Special Education Cases." Student may seek enforcement of a subpoena after one has been issued and served. Student may contact the Case Manager assigned to this matter to request a subpoena.

Student's motion is silent on whether or when a request for the documents described in Student's motion was made to Newport-Mesa. Accordingly, it cannot be determined if Newport-Mesa received or complied with an educational records request under the Education Code. (Ed. Code, § 56504.) Student may seek enforcement of an educational records request upon proof of service of a request on Newport-Mesa if the records requested are not received.

For the reasons stated, Student's motion to subpoena records is denied.

IT IS SO ORDERED.

DATED: November 1, 2019

DocuSigned by:
Alexa Hohensee
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Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings