BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA ANA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018110993 ORDER DENYING REQUEST THAT OAH SUBPOENA BODY CAMERA FOOTAGE; DENYING MOTION TO CEASE AND DESIST RETALIATORY CONDUCT; AND DENYING REQUEST TO DESIGNATE A SINGLE POINT OF CONTACT

On March 25, 2019, Student filed with the Office of Administrative Hearings a "Motion to Cease and Desist." Student seeks an order for Santa Ana Unified School District to refrain from engaging in retaliation or coercion as defined by the implementing regulations of the Americans with Disabilities Act, and requests that a single point of contact be designated for all future communications with regards to Student's due process request. Student's motion is not supported by a declaration under penalty of perjury. To support his motion, Student requests that OAH subpoena the body camera footage captured by a peace officer who responded to Student's residence on February 25, 2019, during an investigation of excessive school absences.

On March 28, 2019, Santa Ana filed an opposition on the grounds that OAH does not have jurisdiction over Student's motion or to award the requested remedies. Santa Ana further denies any acts of retaliation, intimidation, or threats.

APPLICABLE LAW

OAH's Limited Jurisdiction

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the

identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to entertain claims or motions based on the Americans with Disability Act (Title 42 U.S.C. §§ 1201, et seq.).

Issuance of Subpoenas

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. Rather, federal law 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).) 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 of Regs., tit. 5, § 3082, subd. (c)(2).)

DISCUSSION

OAH does not subpoena evidence for a party. Rather, as specified above, a party may request OAH to issue a subpoena or a subpoena duces tecum so that the requesting party may secure necessary witness testimony or evidence to be produced at the time of the due process hearing. Student fails to provide any legal authority which would allow OAH to issue a subpoena duces tecum for body camera footage in support of his prehearing motion.

In his motion, Student generally alleges that Santa Ana has prevented him from attending school in accordance with his doctor's medical recommendations; has had numerous personnel contact Parents and call the family home; initiated School Attendance Review Board proceedings and sent peace officers to Student's home to investigate his chronic absences; and threatened to involve Child Protective Services. Student claims all of these actions constitute retaliation and have resulted in the intentional infliction of emotional distress to Student and his family. Student's motion does not set forth any facts in the form of a sworn declaration on which OAH could have based any factual findings.

Even if Student had provided evidence in support of his motion, Student's motion fails to set forth any legal authority which would allow OAH to order Santa Ana to cease and desist from any alleged retaliatory conduct as defined by the Americans with Disabilities Act. Nor does Student provide any legal authority that would authorize OAH to order Santa Ana to designate a single point of contact for communication between the two parties. Santa

Ana is correct that Student seeks remedies outside OAH's jurisdiction. Accordingly, Student's motion is denied.

ORDER

1. Student's request that OAH subpoena body camera footage is denied.

2. Student's motion to cease and desist is denied.

3. Student's request that Santa Ana designate a single point of contact is denied.

IT IS SO ORDERED.

DATE: April 5, 2019

DocuSigned by:
Theresa Ravandi
180B9BDB98E5424...

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings