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 MOTION TO QUASH SUBPOENAS DUCES TECUM

APRIL 11, 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 5, 2022, Student issued six subpoenas duces tecum for Kentfield staff requiring the production of various documents on the first day of hearing. Student issued the subpoenas by email to Kentfield's counsel per prior agreement.

On April 7, 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. On April 8, 2022, Student filed an opposition.

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.

Service of process via electronic mail is only allowed if the party receiving the document has authorized service via electronic mail. (Code Civ. Proc. § 1010.6 (a)(2)(A)(ii).) In this case, counsel for Kentfield agreed to accept service of the subpoenas through email on behalf of Kentfield. Kentfield's counsel acknowledged

receipt of the subpoenas via email on April 5, 2022, at 6:05 P.m. Student, therefore, effectuated service of the subpoenas on April 5, 2022. (Cal. Code. Civ. Proc. § 1010.6(a)(4)(A) [electronic service of a document is deemed complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent].)

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. OAH requires that all subpoenaed documents be uploaded into its electronic evidence platform Case Center, formerly called CaseLines. OAH generally locks access to this electronic evidence platform three business days prior to hearing. OAH will keep the Case Center platform open through Friday, April 15, 2022, for the sole purpose of allowing Kentfield staff additional time to upload the subpoenaed documents. Kentfield did not show that the subpoenas should be quashed because they were untimely.

ORDER

Kentfield's motion to quash Student's April 5, 2022 subpoenas duces tecum to Kentfield staff is denied.
Theresa Ravandi

Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings