

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009090847

ORDER DENYING MOTION TO  
SUBPOENA, SEQUESTER, AND GAG  
WITNESSES

On or about November 1, 2009, Student filed a motion to "subpoena, sequester and gag" numerous potential witnesses on the ground that they "may interact with public and media." On November 5, 2009, the District filed an opposition, and on November 9, Student filed a reply.

Also on November 9, 2009, Student filed a "Motion to Amend Motion Request to Subpoena, Sequester and Gag Order the Following Personnel." The document is in essence an amended motion, and it requests the same relief. On November 12, the District filed an opposition, and on November 16, the District filed a reply.

DISCUSSION

The District's claim that Student should not be permitted to amend his motion is unsupported by authority or reasoning. Since Student could withdraw his motion and file a new one, nothing would be accomplished by such a ruling. An amended motion supersedes the original motion for all purposes. The amended motion repeats the content of the original motion and adds eight lines of text. The amended motion is properly filed, and is the subject of this ruling.

Student's claim that the District's opposition to his amended motion was late because it was not filed within three days of the amended motion misstates the day Student's amended motion was filed. It was received at OAH by fax after 5 p.m. on Friday, October 6, 2009, and is therefore deemed filed on the next business day, October 9. As stated in OAH's Scheduling Order, the opposing party has three business days to respond to a motion. The District's response was timely filed.

OAH's jurisdiction in special education matters is set forth by statute, and is limited. (Ed. Code, § 56501, subd. (a); *Wyner v Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029.) OAH does not have jurisdiction to sequester witnesses in any way that would restrain them from talking to the media, or to gag witnesses, and cannot grant the relief Student requests.

It is the responsibility of the parties to subpoena their own witnesses. OAH staff will send Student the appropriate forms. Information about subpoenas and other procedures may be found on the OAH web site [<http://www.oah.dgs.ca.gov/Special+Education/default.htm>] in the guide entitled Understanding Special Education Due Process Proceedings.

Student's reply to the District's first opposition raises numerous issues concerning the production of witnesses, the length of the hearing, and other matters. These issues will be addressed at the prehearing conference scheduled for December 7, 2009.

OAH generally decides motions based on the moving papers and an opposition. Replies are not allowed or considered without prior leave of an ALJ. The parties are admonished to observe these limits in future pleadings.

#### ORDER

1. Student's amended motion to subpoena, sequester, and gag witnesses is properly filed, and supersedes Student's original motion for all purposes.
2. Student's amended motion to subpoena, sequester, and gag witnesses is denied.

Dated: December 1, 2009

/s/

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CHARLES MARSON  
Administrative Law Judge  
Office of Administrative Hearings