

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRUITVALE SCHOOL DISTRICT,  
FRUITVALE SCHOOL DISTRICT  
BOARD MEMBERS, BOARD MEMBERS  
OF KERN COUNTY SUPERINTENDENT  
OF SCHOOLS, VALLEY OAKS  
CHARTER SCHOOLS, AND OUR LADY  
OF GUADALUPE.

OAH CASE NO. 2012030900

ORDER DENYING ISSUANCE OF  
SUBPOENA DUCES TECUM

On April 27, 2012, Parent on behalf of Student filed a second amended complaint naming Fruitvale School District (District), Fruitvale School District Board Members (District Board), Board Members of Kern county Superintendent of Schools (Superintendent Board), Valley Oaks Charter School (Charter) and Our Lady of Guadalupe School (OLG). On May 1, 2012, Student filed a Motion for Subpoena Duces Tecum (SDT) seeking un-redacted copies of Kern County Child Protective Services (CPS) records pertaining to Parent and Student.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).) The hearing officer in a special education due process proceeding may issue subpoenas or SDTs upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

The confidentiality of reports of child abuse in California is governed by Child Abuse and Neglect Reporting Act (CANRA), Penal Code, section 11167.5, which provides:

(a) The reports required by Sections 11166 and 11166.2, or authorized by Section 11166.05, and child abuse or neglect investigative reports that result in a summary report being filed with the Department of Justice pursuant to subdivision (a) of Section 11169 shall be confidential and may be disclosed only as provided in

subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars (\$500), or by both that imprisonment and fine.

(b) Reports of suspected child abuse or neglect and information contained therein may be disclosed only to the following:

(11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to paragraph (7) of subdivision (b) of Section 11170 or subdivision (c) of Section 11170, or persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided in subdivision (f) of Section 11170. Disclosure under this paragraph is required notwithstanding the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting any information necessary to maintain confidentiality as required by law.

Pupil or education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA). (20 U.S.C. § 1232; 34 C.F.R. § 99.3.) Pupil records include any item of information “directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means.” (Ed. Code, §§ 49061, 56504.) A parent may obtain her child’s educational records (Ed. Code § 56504.) There is, however, no right to pre-hearing discovery under the IDEA. The purpose of a due process hearing complaint is to determine whether a school district violated the IDEA, not to obtain records of child abuse and neglect. (*A.B. v. Clarke County School Dist.* (M.D.Ga. 2009) 2009 WL 902038, \*11.)

## DISCUSSION

The records requested by Student are beyond the scope of Student’s second amended complaint and constitute a request for prehearing discovery. Furthermore, pursuant to California Rule of Court 5.552(b)(4), a juvenile case file may not be obtained or inspected by issuance of a civil or criminal subpoena. It appears that Student is seeking access to his juvenile case file. Parent may access Student’s CPS records through the Welfare and Institutions Code Section 827 procedures.

ORDER

Student's Motion for Issuance of a Subpoena Duces Tecum for Kern County CPS records is denied.

Dated: May 7, 2012

/s/

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THERESA RAVANDI  
Administrative Law Judge  
Office of Administrative Hearings