

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012031253

ORDER DENYING REQUEST FOR
SUBPOENAS

On June 11, 2012, Parent, on behalf of Student, verbally requested that the Office of Administrative Hearings (OAH) issue approximately 33 subpoenas for service upon witnesses that Student intends to call at the due process hearing in this matter. Parent's request was forwarded to the undersigned Presiding Administrative Law Judge, who spoke to Parent and took the request under submission, due to the extraordinarily large number of subpoenas being requested. As discussed below, the request is denied without prejudice.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in 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, § 56506, subds. (e)(3), (3).) There is, however, no right to pre-hearing discovery under the IDEA. A parent may obtain his/her child's educational records (Ed. Code § 56504.) Additionally, the parties are entitled to receive copies of all the documents the opposing party intends to use at hearing, no less than five days prior to the hearing (Ed. Code § 56505, subd. (e)(7).)

The provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal Code Regs., tit. 5, § 3089.) Subdivision (c)(2) of section 3082 of title 5 of the California Code of Regulations provides in pertinent part that 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 (SDT) (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party)."

DISCUSSION

Student is not represented by legal counsel in this matter and Parent is not an attorney. Therefore, any subpoenas issued on behalf of Student shall be issued by OAH. The subpoenas that Parent requested, according to Parent, were primarily for service upon staff and administrators of the Castro Valley Unified School District (District).

This matter is currently set for mediation on June 20, 2012, prehearing conference on July 2, 2012, and due process hearing to begin on July 10, 2012. At this time, there is no indication that the parties have disclosed their potential witness lists to each other; no indication that the parties have met and conferred as to scheduling of witnesses; and, no indication that District would refuse to make available its staff and administrators for examination by Student. With respect to witnesses that are under control of a party, OAH encourages parties to meet and confer with one another as to the scheduling of those witnesses and the production of witnesses without the need for subpoenas.¹

Student shall make reasonable efforts to meet and confer with District regarding the District staff and administrators that Student requests be produced without the need for a subpoena. If after that discussion, there is a dispute as to the production of particular witnesses without a subpoena, then Student may request that OAH issue the necessary number of subpoenas.²

ORDER

Student's request for subpoenas is denied without prejudice.

Dated: June 19, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ This order does not make a finding as to whether any of the staff or administrators Student intends to call to testify would be relevant or appropriate witnesses in this matter.

² This order does not limit any party's right to move to limit or quash a subpoena.