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3 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

4 IN THE MATTER OF THE HEARING  
5 OF AN APPEAL BY:

No. 11F-002-ADE

6 TUCSON UNIFIED SCHOOL DISTRICT  
7 NO. 1

**ORDER QUASHING SUBPOENAS**

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11 On August 1, 2011, the Office of Administrative Hearings received a Motion to  
12 Quash subpoenas directed to depose Curtis Acosta and Sean Arce. Among the  
13 reasons provided for quashing the subpoenas was that there has been no showing that  
14 Mr. Acosta or Mr. Arce are unavailable to appear at the hearing of this matter.

15 In a Response to the Motion to Quash that was filed on August 2, 2011, the  
16 Department argued that pursuant to A.R.S. § 41-1092.07(F)(4) and A.A.C. R2-19-113,  
17 the subpoenas are not oppressive or burdensome and that there are no other means  
18 available to obtain the testimony of the witnesses. The Department also provided  
19 information as to why the testimony of the witnesses is necessary. The Department  
20 asserted that because Mr. Arce and Mr. Acosta are Tucson residents, they can not be  
21 compelled to travel to Phoenix and attend the hearing. However, the Department did  
22 not cite to any legal authority in support of that position.

23 This matter was brought before the Office of Administrative Hearings pursuant to  
24 A.R.S. § 41-1092 *et seq.* and A.R.S. § 41-1061 *et seq.* does not apply to the instant  
25 matter. See A.R.S. § 41-1067 and 41-1092.02. The statute that applies with respect to  
26 depositions is A.R.S. § 41-1092.07(F)(4), which requires a showing of unavailability at  
27 the hearing in order to depose a witness.

28 Although the parties have been cooperative in conducting discovery, there is no  
29 right to a deposition in an administrative proceeding under A.R.S. § 41-1092 *et seq.* but  
30 for A.R.S. § 41-1092.07(F)(4). The Administrative Law Judge finds that there has been  
no showing that Mr. Acosta or Mr. Arce are unavailable to appear at the hearing, and

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2 the Department and/or the District may obtain subpoenas to compel their attendance at  
3 the hearing, either in person or telephonically. Consequently, a valid basis has been  
4 presented to quash the subpoenas.

5 **THEREFORE,**

6 **IT IS ORDERED** granting the Motion to Quash the subpoenas to depose Mr.  
7 Acosta and Mr. Arce.

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9 Done this day, August 3, 2011.

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12 \_\_\_\_\_  
13 Lewis D. Kowal  
14 Administrative Law Judge

15 Copy mailed this \_\_\_\_ day of  
16 \_\_\_\_\_, 2011 to:

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