BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024040358

ORDER GRANTING IN PART AND DENYING IN PART FREMONT'S MOTION TO QUASH SUBPOENA TO AVANIJA KOMARRAJU

MAY 24, 2024

On April 9, 2024, Parents on behalf of Student, hereinafter Parents, filed a request for due process naming Fremont Unified School District. On April 16, 2024, an order granting a continuance in this matter was granted scheduling the case for hearing on May 29, 2024, through May 30, 2024.

On April 23, 2024, Parents issued a subpoena duces tecum to Avanija Komarraju, seeking:

1) All speech therapy worksheets/work samples completed by [Student] and their aligned state standards and how it aligned to the session notes/data collection.
2) All speech therapy instructional materials used to teach [Student] and their aligned state standards.
3) Speech therapy and AAC consultation Service logs with the date, time (log in and out), name of the provider(s), and the number of students in the group/individual.

Copies of the subpoena(s) were sent to Fremont and to Avanija Komarraju. The records were to be produced through upload to the Case Center platform on May 29, 2024, the first day of hearing.

On May 16, 2024, Fremont filed a motion to quash the subpoenas on the grounds that Parents failed to establish reasonable necessity for the records, that the requests were overbroad, unduly burdensome and did not seek information relevant to the instant case. On May 20, 2024, Parents opposed the motion arguing that the subpoenas sought necessary and relevant information.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act, also 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).)

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).) This requirement mirrors that required by Code of Civil Procedure section 1985, subdivision (b), which requires:

> A copy of an affidavit shall be served with a subpoena duces tecum . . ., showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.

The good cause requirement is met by a factual showing of why the requested documents or things are material and relevant to the litigated issues. (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, Office of Administrative Hearings, referred to as 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.

REASONABLE NECESSITY FOR THE RECORDS

Fremont argues that the subpoena duces tecum should be quashed because it fails to make the requisite showing of reasonable necessity for the requested documents

with a statement of facts showing the material and relevant information sought. (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.)

Parents' declaration in support of the subpoena states that the speech therapy worksheets and work samples completed by Student, speech therapy instructional materials, and speech therapy and AAC consultation service logs are necessary to show that Fremont denied Student a FAPE in Fremont's delivery of the speech therapy and AAC services to Student. Fremont contends that the records sought by Parents are a fishing expedition and not necessary for Parents to be able to present a case at hearing.

Parents have alleged that Student was denied a FAPE because his IEP was not followed as to speech therapy and AAC services. Parents' declaration asserts that some of the documents subpoenaed are material and relevant.

The subpoena that was issued established reasonable necessity for production of some of the records sought, specifically, Student has established reasonable necessity for documents in item 1, "All speech therapy worksheets/work samples completed by [Student]"; and item 3," Speech therapy and AAC consultation Service logs".

The subpoena failed to establish a necessity for documents in item 2, "All speech therapy instructional materials used to teach [Student]".

ORDER

1. Fremont's motion to quash Parents' subpoena is granted in part and the subpoena is hereby modified. Komarraju shall produce responsive documents in Komarraju's possession identified as the speech therapy worksheets and

work samples completed by [Student] and the speech therapy and AAC consultation service logs for [Student].

2. Student's request for records relating all speech therapy instructional materials used to teach [Student] is quashed.
3. Komarraju shall upload responsive records to the Case Center platform through the link provided by OAH, on Wednesday, May 29, 2024, by 9:30 a.m.
4. Counsel for Fremont shall immediately serve a copy of this order on Komarraju.

IT IS SO ORDERED.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings