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 ROWENA COWEN

MAY 24, 2024

On April 9, 2024, Parents on behalf of Student, filed a request for due process naming Fremont Unified School District. On April 16, 2024, the Office of Administrative Hearings, called OAH, granted a continuance in this matter scheduling the case for hearing on May 29, 2024, through May 30, 2024.

On April 23, 2024, Parents issued a subpoena duces tecum to Rowena Cowan, seeking:

1. Formal Incident Report of [Student]'s injury at school on January 19, 2024.

2. Formal Incident Report of [Student]'s injury at school on February 29, 2024.
3. The number of human biting incidents reported between August 16, 2023, and April 24, 2024, in Mr. Bashir's II SDC classroom in MSJE.
4. The total number of incidents that students caused bodily injuries to staff/students in all classrooms enrolling 5th-grade students, with a breakdown to each kind of classroom within FUSD (mild-moderate SDC, moderate SDC, moderate-severe SDC, Intensive Instruction SDC, general ed class).
5. The total number of human-biting incidents in FUSD in 2022-23 and 2023-24 school years that caused injuries to other students or staff in all classrooms enrolling 5th-grade students. Break down the statistics to each kind of classroom within FUSD (mild-moderate SDC, moderate SDC, moderate-severe SDC, Intensive Instruction SDC, general ed class).

Copies of the subpoena(s) were sent to Fremont. The subpoena to Cowen sought specific Incident Reports for Student for incidents on January 19, 2024, and February 29, 2024. The subpoena also sought generalized information and data compilation of the number of human biting incidents for Bashir Gouhary's special day classroom between August 16, 2023, and April 23, 2024, along with generalized information and data for bodily injuries in all 5th grade classrooms, and all biting incidents in 5th grade classrooms over a two school year period. 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 incident report and risk information of each type of classroom are necessary for Parents to assess risks to their Student and meaningfully participate in IEPs for Student. The specific incident reports, Gouhary classroom information, and schoolwide information are necessary for Parents to have the school's information about injury incidents to their Student, and schoolwide, so as to determine whether Student is safe in the Gouhary classroom or at school. 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 as a result of being taught in an unsafe environment in Gouhary's 5th grade classroom. Parents' declaration asserts

that some of the documents subpoenaed are material and relevant. Specifically, Parents argue that some records are necessary to prove Fremont denied Student a safe environment in the Gouhary classroom.

The subpoena that was issued complied with the requirement that it be accompanied by a declaration establishing reasonable necessity for production of the records.

SCOPE OF THE SUBPOENA

Fremont contends that the subpoena is overly broad and unduly burdensome as the subpoena requests documents that are either not relevant for hearing or place unreasonable demands on the producing party. The specific Incident Reports for Student for incidents on January 19, 2024, and February 29, 2024, are necessary and relevant and must be produced. However, Student failed to provide sufficient basis for needing all other information relating to biting incidents and or other bodily injuries to all other students in all 5th grade classrooms over a two-year period. Such a request is on its face is overbroad and does not lend itself to specific, necessary, or relevant information related to Student's issues for hearing.

ORDER

1. Fremont's motion to quash Parents' subpoena is granted in part and the subpoena is hereby modified. Cowen shall produce responsive documents in Cowen's possession of the Student's injury Incident Reports for January 19, 2024, and February 29, 2024.
2. Student's request for records relating to all other information relating to biting incidents and or other bodily injuries to all other students in all 5th

grade classrooms over a two-year period, as identified in subpoena categories number 3, 4 and 5, is quashed.

3. Cowen 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 Cowen.

IT IS SO ORDERED.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings