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 DUCES TECUM TO HEIDI RUSCHER

MAY 21, 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, Heidi Ruscher, seeking:

1) Modified Curriculum and other instructional materials with aligned state standards that were used to teach Chung-Ren or planned to be used to teach Chung-Ren during the 2023-2024 school year when Chung-Ren attended the 2nd-grade science class and 5th-grade science class.
2) General education Curriculum for the 2023-2024 school year of the 2nd-grade and 5th-grade Science classes that Chung-Ren attended, and the aligned state standards.
3) Chung-Ren's progress report in Science and corresponding grade level.

Copies of the subpoena(s) were sent to Fremont with the notice to consumer. The subpoena to Heidi Ruscher sought modified curriculum and other instructional material used to teach Student, along with general education curriculum, state standards, and Student's progress reports. 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 curriculum and instructional materials, along with Student's progress reports, are necessary to determine whether the alternative curriculum utilized for Student denied Student a free appropriate public education, called a FAPE because Fremont unilaterally modified the Science curriculum without Parents' consent. 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 given a modified Science curriculum, instead of the general education curriculum, without their consent. 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 FAPE when it unilaterally utilized a modified curriculum.

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. Student's allegations assert that Fremont failed to provide them a FAPE by changing Student's curriculum. The general education and modified curriculum frameworks, and Student's progress reports in science, are necessary and relevant and must be produced. However, Student failed to provide sufficient basis for needing all other instructional materials, rather than just the identified modified and general education curriculum frameworks used to implement the State standards.

ORDER

1. Fremont's motion to quash Parents' subpoena is granted in part and the subpoena is hereby modified. Ruscher shall produce responsive documents in Ruscher's possession identified as the modified and general education curriculum frameworks that Ruscher used to implement the State standards for Student's second grade and fifth grade Science classes for the 2023-2024 school year and Student's progress reports for Student's Science classes.
2. Student's request for records relating to other instructional materials aligned with State standards that were used or intended to be used with Student is quashed.
3. Ruscher 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 Ruscher.

IT IS SO ORDERED.

Ted Mann

Ted Mann

Administrative Law Judge

Office of Administrative Hearings