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 2025030065

ORDER GRANTING FREMONT UNIFIED SCHOOL DISTRICT'S MOTION TO QUASH SUBPOENAS DUCES TECUM FOR AARON PLACKE, EMILY DINH, EMILY IBARRA-ZUNIGA, AND NICOLE SBARGIA

JUNE 5, 2025

On March 3, 2025, Parents on behalf of Student filed with the Office of Administrative Hearings, called OAH, a due process hearing request naming Fremont Unified School District. On May 6, 2025, OAH continued the hearing for good cause and set the hearing to begin on June 10, 2025.

On May 16, 2025, Student issued subpoenas duces tecum on Aaron Placke, Emily Dinh, Emily Ibarra-Zuniga, and Nicole Sbragia. According to the subpoenas, Placke and

Ibarra-Zuniga are teachers, and Dinh and Sbragia, substitute teachers at Esther B. Clarke Schools.

The subpoenas to Placke, Dinh, Ibarra-Zuniga, and Sbragia are similar in the types of records requested, differing only in the period in which they delivered instruction to Student. The subpoena for Dinh seeks records from the 2023-2024 school year, through the 2024 extended school year. The subpoena for Ibarra-Zuniga seeks records for the 2024 extended school year, through the 2024-2025 school year. The subpoenas for Placke and Sbragia seek records during the 2024-2025 school years.

The records sought in each of the subpoenas consist of:

1. curriculum, textbook, and instructional materials with information of publisher, aligned State content standards, and grade levels for all courses/subjects that were used or planned to be used to teach Student;
2. classroom weekly bell schedules with course names and time of each period and/or any weekly bell schedule revisions;
3. class syllabus with information including but not limited to courses, classwork and homework policy/rules, make-up/missed work rules/policy, grading criteria, grading accommodations and modifications, and grading table;
4. course catalog with information including but not limited to course name, subject, grade level, recommended prerequisite, course description, length of course (number of minutes per period, number of periods per week, number of semesters), course credits per semester, for all courses/subjects offered by the teach to their class; and
5. records (including but not limited to class syllabi, transcripts, modified/reduced work completion plan, progress reports, report cards,

service logs with type of service, teacher notes, all of Student's completed worksheets, work samples, assignments, classwork, homework, course tests/quizzes/projects/assessments and data collection of IEP goals the teacher held at school, learning history of each course that was considered to conclude the semester or extended school year grade) associated with the delivery of education and related services to Student.

In the subpoenas, Parent declared the records sought from Placke, Dinh, Ibarra-Zuniga, and Sbragia are necessary for Student to prove Fremont Unified denied Student a free appropriate public education, called FAPE, and predetermined Student's individualized education program, called IEP, placement and program.

On May 22, 2025, Fremont Unified filed a motion to quash the subpoenas duces tecum for Placke, Dinh, Ibarra-Zuniga, and Sbragia. Fremont Unified contends the subpoenas should be quashed because the subpoenas fail to demonstrate the requested documents are reasonably necessary, and the requests are overbroad and places an undue burden on the subpoenaed person.

On May 27, 2025, Student filed an opposition to the motion. Student contends the records sought from Placke, Dinh, Ibarra-Zuniga, and Sbragia are necessary to determine if Student was provided an appropriate placement with a curriculum that allowed for grade-level academic credit in core subjects.

A party to a due process hearing under the Individuals with Disabilities Education Act, 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 California special education proceedings, the hearing officer shall have the right to issue a subpoena duces tecum, which orders the production of documents or papers 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, 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.

The issues to be heard and decided at hearing involve Fremont Unified's alleged failure from March 7, 2024, through March 3, 2025, to offer an appropriate placement that met Student's unique disability-related needs and provided Student access to

grade-level academic credit in core subjects. Student argues in his due process hearing request that the March 7, 2024, IEP's offer of placement in a counseling-enriched special day class at Student's home school was inappropriate to meet his social-emotional, behavioral, and academic needs.

Student established descriptions of his courses, his report cards, transcripts, progress reports, and assessments at Ester B. Clark Schools are documents reasonably necessary to determine his academic and functional performance during the 2023-2024, and 2024-2025 school years. Student's academic and functional performance is relevant to whether Fremont Unified offered an appropriate placement from March 7, 2024, that met Student's disability-related needs and allowed him access to grade-level academic credit in core subjects.

However, Student failed to establish any other types of records sought in the subpoenas duces tecum are reasonably necessary. The types of records listed in 1 through 5 as described above, beyond the descriptions of Student's courses, his report cards, transcripts, progress reports, and assessments, are not reasonably necessary to determine the appropriateness of Fremont Unified's offered placement based on Student's academic and functional performance and needs.

On June 4, 2025, OAH issued an order granting in part Fremont Unified's motion to quash Student's subpoena duces tecum for Tara Keith, Director of Esther B. Clarke Schools. OAH modified the subpoena requiring Keith to produce documents from the 2023-2024 school year, through the 2024-2025 school year of descriptions of Student's courses, his report cards, transcripts, progress reports, and assessments.

In light of the modified subpoena for Keith, production of the descriptions of Student's courses, his report cards, transcripts, progress reports, and assessments,

during the 2023-2024 school year, through the 2024-2025 school year, from individual teachers Placke, Dinh, Ibarra-Zuniga, and Sbragia are not necessary. Accordingly, the motion to quash the subpoenas duces tecum for Placke, Dinh, Ibarra-Zuniga, and Sbragia, is granted.

The subpoenas requiring Placke, Dinh, Ibarra-Zuniga, and Sbragia to appear to testify at the videoconference hearing at the date and time indicated in their subpoenas remains in effect.

ORDER

1. Fremont Unified's motion to quash Student's subpoenas duces tecum to Aaron Placke, Emily Dinh, Emily Ibarra-Zuniga, and Nicole Sbragia is granted. The subpoenas for records to Aaron Placke, Emily Dinh, Emily Ibarra-Zuniga, and Nicole Sbragia are hereby quashed.
2. The subpoenas requiring Aaron Placke, Emily Dinh, Emily Ibarra-Zuniga, and Nicole Sbragia to appear at the videoconference hearing to testify remains in effect. Aaron Placke, Emily Dinh, Emily Ibarra-Zuniga, and Nicole Sbragia shall appear to testify at the date and time stated in their subpoenas, unless otherwise ordered.
3. Student shall immediately serve a copy of this Order on Aaron Placke, Emily Dinh, Emily Ibarra-Zuniga, and Nicole Sbragia

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings