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 BRIAN SINGLETON

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 Brian Singleton, seeking:

1) PE Curriculum with aligned standards for 5th grade non-disabled students.

2) Number of PE minutes per week or two weeks a 5th grade non-disabled student attends.
3) Modifed PE curriculum with aligned standards used to teach [Student] and II-SDC students in Mr. Bashir's class.
4) Number of PE minutes per week or every two weeks for [Student] and Mr. Bashir's II-SDC.
5) [Student]'s progress report in PE and corresponding grade level.

Copies of the subpoena(s) were sent to Fremont and to Brian Singleton. 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 show that Fremont unilaterally decided on PE weekly minutes without informing parents and the PE teacher implemented the modified Curriculum without parental consent, discussion in the IEP, or sharing the content of the Modified Curriculum and its aligned standard. Parents further argue that the PE Teacher did not share any PE progress report with parents. 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 physical education, and inadequate physical education was offered by Fremont. 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, "PE Curriculum with aligned standards for 5th grade non-disabled students; item 3,"Modifed PE curriculum with aligned standards used to teach [Student] and II-SDC students in Mr. Bashir's class;" and item 5, "[Student]'s progress report in PE and corresponding grade level." Curriculum is interpreted to mean the curriculum framework applicable to those categories.

The subpoena failed to establish a necessity for documents in item 2, "number of PE minutes per week or two weeks a 5th grade non-disabled student attends;" and

documents in item 4, "number of PE minutes per week or every two weeks for [Student] and Mr. Bashir's II-SDC."

ORDER

1. Fremont's motion to quash Parents' subpoena is granted in part and the subpoena is hereby modified. Singleton shall produce responsive documents in Singleton's possession identified as the modified and general education curriculum frameworks that Singleton used to implement the State standards for Student's physical education classes for the 2023-2024 school year and Student's progress reports for Student's physical education classes.
2. Student's request for records relating to the number of minutes per week or two weeks that a non-disabled 5th grade student attends physical education class; and the number of minutes Student and Mr. Bashir's II-SDC attends the physical education classes during the 2023-2024 school year are quashed.
3. Singleton 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 Singleton.

IT IS SO ORDERED.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings