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 COURTNEY STONESIFER

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 Courtney Stonesifer, seeking:

1) All occupational therapy worksheets/work samples completed by [Student], their aligned state standards and the consistency with the session notes/data collection.
2) All occupational therapy instructional materials used to teach [Student] and their aligned state standards.
3) Occupational therapy and occupational therapy consultation Service logs with the date, time (log in and out), and name of the provider(s).

Copies of the subpoena(s) were sent to Fremont and to Courtney Stonesifer. 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 occupational therapy worksheets and work samples completed by Student, occupational therapy instructional materials, and occupational therapy and occupational therapy consultation service logs are necessary to show that Fremont denied Student a FAPE in Fremont's delivery of the occupational therapy 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 occupational therapy. 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 occupational therapy worksheets/work samples completed by [Student]"; and item 3, "Occupational therapy and occupational therapy consultation Service logs".

The subpoena failed to establish a necessity for documents in item 2, "All occupational 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. Stonesifer shall produce responsive documents in Stonesifer's possession identified as the occupational therapy worksheets

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

2. Student's request for records relating all occupational therapy instructional materials used to teach [Student] is quashed.
3. Stonesifer 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 Stonesifer.

IT IS SO ORDERED.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings