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 MOTION TO QUASH SUBPOENA DUCES TECUM TO IAN SQUIBB

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, Ian Squibb, seeking:

On April 23, 2024, PARTY issued a subpoena duces tecum to Ian Squibb of Fremont Unified School District. The subpoena sought:

1) Weekly class schedule of 5th-grade general ed with duration, subject, and teacher's names of each period.
2) Number of minutes per week of each subject (ELA, Math, Science, History-Social Science, Science lab, computer/ technology, help/tutoring unfinished work/project) for 5th grade general ed.

On May 16, 2024, Fremont Unified School District filed a motion to quash the subpoena on the grounds that the request failed to establish a reasonable necessity for the documents. On May 20, 2024, Student opposed the motion arguing that the documents were relevant and necessary. At the time of the prehearing conference, both sides stipulated that Squibb had never taught Student.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act, or 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.

NO 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. Specifically, Parents and Fremont agreed, during the prehearing conference, that Squibb had never taught Student.

Student's declaration in support of the subpoena the documents are necessary because Fremont failed to invite a 5th grade general education teacher to an IEP meeting for Student. However, this is not an issue that was pled in Student's complaint.

Student's declaration fails to establish that the subpoenaed documents are material and relevant, or reasonably necessary to establish a claim.

ORDER

1. Fremont's motion to quash Student's subpoena duces tecum to Ian Squibb is granted.
2. Counsel for Fremont shall immediately serve a copy of this order on Ian Squibb.

IT IS SO ORDERED.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings