BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020100499

ORDER GRANTING MOTION TO QUASH SUBPOENA

JANUARY 22, 2021

On October 16, 2020, Student filed a request for due process naming Fremont Unified School District. On November 23, 2020, an order granting a continuance in this matter was granted scheduling the case for hearing on January 26, 27, and 28, 2021.

On January 15, 2021, Student issued a subpoena on Camille Resendez. Student sent a notice to Counsel for Fremont advising Fremont of the subpoena directed to Resendez.

On January 21, 2021, Fremont filed a motion to quash the subpoena on the grounds that Student failed to establish a reasonable necessity for the appearance and testimony of Resendez. Fremont contends that all of the issues for hearing involve Student's May 4, 2020 individualized education program, called an IEP, team meeting.

Fremont asserts that Resendez did not attend the May 4, 2020 IEP team meeting, had no involvement with Student until the 2020-2021 school year, and therefore there is no reasonable necessity for her testimony.

On January 22, 2021, Student filed a response opposing the motion, arguing that Resendez has information regarding notices of IEP team meetings during the 2020-2021 school year, which Student asserts are at issue in this matter.

APPLICABLE LAW

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

Student's subpoena issued to Resendez failed to comply with the requirement that it be accompanied by a declaration establishing a reasonable necessity for the appearance and testimony of Resendez. Student's contention in her response to the motion to quash, that meeting notices for IEP team meetings occurring during the 2020-2021 school year are at issue in this case is erroneous. The issues were discussed at length and clarified by the parties during the prehearing conference. The order following prehearing conference stated the issues as discussed and clarified at the prehearing conference. The order following prehearing conference ordered the parties to promptly submit any objection to the wording of the issues if either party contended that the issues did not reflect the discussion at the prehearing conference. No opposition to the statement of issues was received by either party. Student's issue is stated as follows:

1. Did Fremont deny Student a free appropriate public education by:
   a. failing to timely provide notice of the May 4, 2020 individualized education program, called IEP, team meeting;

b. failing to schedule the May 4, 2020 IEP team meeting at a mutually agreeable time and place;

c. convening an IEP team meeting on May 4, 2020, without Parent;

d. providing a placement offer to Student, in Parent's absence, at the May 4, 2020 IEP team meeting;

e. failing to provide a legally sufficient notice of the May 4, 2020, IEP team meeting, specifically, failing to include the names of IEP team participants;

f. including a general education teacher on the IEP team;

g. including a general education teacher on the IEP team who was not currently involved in Student's education?

Only the IEP team notice for the May 4, 2020 IEP team meeting is at issue in this case. Accordingly, Student failed to establish any reasonable necessity for her subpoena of the appearance and testimony of Resendez. Fremont's motion to quash the subpoena is granted.

ORDER

1. Fremont's motion to quash Student's subpoena to Camille Resendez is granted for Student's failure to state a reasonable necessity for her testimony. The subpoena issued to Camille Resendez is hereby quashed.
2. Counsel for Fremont shall immediately serve a copy of this order on Camille Resendez.

Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings