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 DENYING MOTION TO COMPEL INFORMATION OF SCHOOL EMPLOYEES, WITHOUT PREJUDICE

MAY 6, 2024

On April 9, 2024, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Fremont Unified School District, called Fremont. On April 10, 2024, OAH issued a scheduling order setting the prehearing conference on May 20, 2024, at 1:00 p.m., and hearing on May 29 and 30, 2024.

On April 23, 2024, Student filed a motion to compel Fremont's disclosure of the last names and email addresses of Student's one-to-one paraeducator, paraeducators who witnessed biting incidences on January 19, 2024, and January 29, 2024, and the school nurse at Mission San Jose Elementary School. Student explained the information

was required to issue subpoenas. Fremont did not file an opposition or a response to the motion.

A party to a due process hearing under the Individuals with Disabilities Education Act, called the 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, the hearing officer shall have the right to issue Subpoenas, to order to appear and give testimony, and Subpoenas Duces Tecum, to order to produce documents or papers upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

However, there is no right to prehearing discovery in due process proceedings under the IDEA. Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at 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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

Pre-hearing discovery in special education cases at the administrative hearing stage is limited. Parents or adult students are entitled to request copies of the educational records, relating to the student in question, that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District,* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing five business days prior to the date of the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).)

Student's motion to compel the information of Fremont's employees' information is therefore premature and denied without prejudice. Student may renew this request at the prehearing conference, currently scheduled for May 20, 2024. The administrative law judge will handle the exchange of witness information at the prehearing conference.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings