BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: FREMONT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017021203 ORDER DENYING REQUEST TO REOPEN RECORD

On June 14, 2017, Student filed a request that the Office of Administrative Hearings titled "False and Misleading Testimony Given at the April 26, 2017 Hearing," with multiple attached documents. On June 15, 2017, OAH received a paper copy of the request, accompanied by a package purportedly containing a CD recording of a January 27, 2016 individualized education plan team meeting. Student asks that she be permitted to introduce additional evidence contained in the request itself, all of the attachments, and the CD recording. This is deemed to be a request to reopen the record. Fremont Unified School District did not file a response.

APPLICABLE LAW

Education Code section 56505, subdivision (e), states that a party is afforded the following rights consistent with state and federal statutes and regulations:

> (2) The right to present evidence, written arguments, and oral arguments.
>
> (3) The right to confront, cross-examine, and compel the attendance of, witnesses. . . .
>
> (7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. . . .
>
> (8) The right pursuant to Section 300.512(a)(3) of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

Education Codes section 56505.1 states that the hearing officer may do the following during the hearing:

> (f) Bar introduction of any documents or the testimony of any witnesses not disclosed to the hearing officer at least five business days prior to the hearing and bar introduction of any documents or the testimony of any witnesses at the hearing without the consent of the other party not disclosed to the parties at least five business days prior to the hearing pursuant to paragraph (7) of subdivision (e) of Section 56505.

DISCUSSION

This matter was heard by the undersigned ALJ on April 26, 27, and May 8, 2017. The matter was then continued to May 24, 2017, to allow the parties to submit written closing arguments. These were timely received and the record was closed.[1]

Student's request to reopen the record contains seven pages of written argument, including purportedly transcribed material from the recording of the January 27, 2016 IEP team meeting, as well as 23 pages of other documents that contain material that Student believes contradicts the testimony of one of the witnesses of hearing. Student did not file a sworn declaration in support of the request, nor is any reason given as to why this material was not introduced at the due process hearing.

Student's representative, Parent, was given the opportunity to cross-exam the witnesses who testified on April 26, 2017, and did so. The ALJ scheduled two additional days of hearing following April 26, 2017, yet no attempt was made by Student to have the witness recalled, or to introduce other evidence or testimony to impeach the witness's testimony. Instead, Student waited until six days before the Decision was due to be issued in this case to attempt to reopen the record in this matter.

Student has not provided good cause as to why the record should be reopened now, nor provided any explanation as to why she did not attempt to introduce this evidence during the hearing. Accordingly, Student's request to reopen the record is denied. The ALJ has not considered any of the information provided in the request to

[1] The ALJ briefly reopened the record on June 6, 2017, after Fremont's closing argument was stricken from the record (pursuant to a motion filed by Student), because Fremont's closing argument exceeded the font size and line spacing requirements the ALJ imposed on the parties for these written arguments. Fremont submitted a compliant closing argument the same day and the record was again closed.

reopen, or the material accompanying the request, in preparation of the written Decision, which is being issued concurrently with this order.

ORDER

1. Student's request to reopen the record is denied.

2. The CD recording shall be returned to Student.

IT IS SO ORDERED.

DATE: June 16, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings