BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2014030731
v.	ORDER DENYING STUDENT'S MOTION TO ADD WITNESSES AS MOOT
GILROY UNIFIED SCHOOL DISTRICT.	

On December 2, 2014, Student timely filed a prehearing conference statement that contained a list of witnesses he intended to call at the due process hearing in this matter, which is set to begin on December 16, 2014. On December 5, 2014, a telephonic prehearing conference was held in this matter, conducted by the undersigned Administrative Law Judge. On December 5, 2014, following the PHC, Student filed a motion to add additional witnesses. On December 8, 2014, Gilroy Unified School District (Gilroy) filed opposition to Student's motion on grounds that the motion was untimely, and that the proposed witnesses do not have relevant evidence to present at hearing.

Education Code section 56505, subdivision (e)(7), requires parties in a due process hearing inform each other no later than five business days prior to the hearing of witnesses they intend to call at the hearing, and other evidence they intend to produce at hearing. There is no requirement that this information is only to be exchanged prior to the PHC. Nor is there a requirement that a party who seeks to add witnesses, or other evidence, do so by way of a motion submitted to the Office of Administrative Hearings if notice is given to the other party more than five business days of the commencement of hearing. Student informed Gilroy of its intent to call additional witnesses in a timely matter when he served it with the motion. However, since there is no need for OAH to decide the motion, it is denied as moot.

In regards to Gilroy's contention that the proposed witnesses will not produce relevant evidence, a determination of this fact cannot be made prior to the time in the due process hearing when the proposed witnesses are to testify. The ALJ hearing this case must make this determination during the hearing, based on the evidence previously presented.

Student's motion to add additional witnesses is denied because it is unnecessary. Student is not precluded from calling these witnesses at hearing since Gilroy was notified

more than five business days prior to the hearing that he intends to call these witnesses. The ALJ conducting the due process hearing will decide whether the testimony of these witnesses is relevant and may be heard.

IT IS SO ORDERED.

DATE: December 10, 2014

/S/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings