BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015100365 ORDER DENYING DISTRICT'S MOTION TO ALLOW ADMITTANCE OF SUPPLEMENTAL EVIDENCE

On October 8, 2015, Student filed a Request for Due Process Hearing (complaint) naming Los Angeles Unified School District. The matter proceeded to due process hearing on January 19, 20, 21, 22, 25, 26, 27 and 28, 2016, and on February 2 and 3, 2016. Both parties were represented by counsel throughout the hearing. The matter was completed on February 3, 2016, with the exception of written closing arguments, due on March 23, 2016.

On February 3, 2016, after the close of hearing, Student's attorney handed District's attorney a note signed by Parent on February 3, 2016, accepting an offer made by District for behavior intervention implementation compensatory education services. The offer was initially set forth in the District's letter of January 8, 2016, which was admitted into evidence as District's exhibit 54. District seeks to have the February 3, 2016 note entered into evidence as exhibit 71, in order to avoid the potential for duplication of remedies. On February 12, 2016, District filed a motion and declaration to admit the note as supplemental evidence and requested telephonic testimony to authenticate the note.

On February 16, 2016, Student filed an opposition on the grounds the new evidence is not relevant or timely and would necessitate an undue consumption of time. In the opposition, Parent and counsel authenticate the February 3, 2016 note.

DISCUSSION AND ORDER

Education Code section 56505, subdivision (e), states that a party shall be 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."

The Order Following Prehearing Conference, issued on January 14, 2016, provided,

"Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible."

District has not provided legal authority requiring the admission of the February 3, 2016 note. Although the note could not have been identified five days prior to hearing, the note lacks sufficient probative value. Even relevant evidence can be excluded when its probative value is substantially outweighed by the probability that its admission will consume too much time. (Evid. Code, § 352.) Evidence may be unduly time consuming where it necessitates extended hearings on matters of minimal probative value. (*Notrica v. State Comp. Ins. Fund* (1999) 70 Cal.App.4th 911, 950.)

District's exhibits 26, 29, 28 and 54 each contain offers of compensatory hours for related services made to Student by District at various times from June 2015 through January 2016. Whether Student has or will avail himself of any of these compensatory hours has no bearing on the decision in this matter. The ALJ will determine, based on the oral and documentary evidence presented at hearing, whether compensatory education is warranted and in what form and amount. (*School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996](discussing broad discretion of a court to fashion appropriate relief in a special education due process case).)

As such, the probative value of the February 3, 2016 note is minimal and does not outweigh the undue consumption of time and further delay in issuing a hearing decision that

would result from taking in additional evidence and testimony. (Gov. Code, § 11513, subd. (f).) Therefore, District's motion is denied.

IT IS SO ORDERED.

DATE: February 23, 2016

DocuSigned by:
Cole Dalton
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COLE DALTON
Administrative Law Judge
Office of Administrative Hearings