BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017071151
v.	ORDER DENYING DISTRICT'S MOTION IN LIMINE TO EXCLUDE STUDENT'S WITNESSES AND EVIDENCE
GARDEN GROVE UNIFIED SCHOOL DISTRICT.	

On March 1, 2018, District filed a motion entitled "Motion In Limine to Exclude Petitioner's Witnesses and Evidence". District asserts that it is seeking to exclude the testimony of Petitioner's expert witnesses Dr. Emi Koga and Guillermo Valdez II, and to exclude Petitioner's exhibits S-32 and S-33. District seeks to exclude exhibits S-32 and S-33, along with all testimony by the two witnesses, because District has not seen the documents, the documents have not been presented at an individual educational program meeting, and the documents relate to matters outside the scope of the hearing. District also requests an order: "to strike all other testimony and exhibits from Petitioner that relate to IEEs conducted after Petitioner filed the Amended Complaint". District asserts that such testimony and exhibits are outside the scope of the hearing, are irrelevant to the issues at hearing, and their introduction would be prejudicial to District.

On March 5, 2018, Student filed an opposition to District's motion on the grounds that it is not supported by logic or any legal authority. The motion was argued on the record at the prehearing conference on March 5, 2018.

APPLICABLE LAW

A party requesting a due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the complaint, unless the other party agrees otherwise. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

California Evidence Code Section 350 states, "No evidence is admissible except relevant evidence." Relevant evidence is defined as evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evidence Code, § 210.) Further, "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible person are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or stature rule which might make improper the admission of the evidence over objections in civil actions." (Govt. Code §11513, subd. (c).)

The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Govt. Code §11513, subd. (f).) In addition, Education Code section 56505.1, subdivision (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

The Ninth Circuit has observed that after-acquired evidence may shed light on the objective reasonableness of a school district's prior actions. (*E.M.* v. *Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1006 [later obtained evidence, such as assessments, may supplement the record if the evidence is relevant, non-cumulative, and otherwise admissible].) The Ninth Circuit held that, in reviewing a district's actions, courts may look to evidence not known to the decision makers at the time as "additional data, discovered late in the evaluation process, may provide significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." (*Ibid*).

Similarly, in upholding a child find violation and determination of eligibility pursuant to emotional disturbance, a Pennsylvania federal district court concluded,

> These types of proceedings are necessitated upon the finding that the school district failed to timely discover a subsequently diagnosed disability. While hindsight can seldom be used in law to impute to a party something it should have known, here it is precisely the device used to adequately assess the student's needs and the school district's obligations at the relevant time.

(*Jana K. v. Annville-Cleona School Dist.* (M.D.Pa. 2014) 39 F.Supp.3d 584, 601-602.)

DISCUSION

District seeks a broad exclusion of all testimony and all evidence related to the independent educational evaluation reports by Student's two experts. Such a request is premature as District has itself indicated that it has not seen the IEE reports, and thus cannot know the reports' content, nor the documents upon which the reports may be based or that relate to the reports. Similarly, an all-inclusive exclusion of all testimony by either of Student's experts is premature.

District's motion in limine to limit the evidence at hearing is denied for these reasons and as set forth in the record at the PHC. The ALJ will consider and rule on any evidentiary objections at hearing.

ORDER

1. District's motion in limine is denied.

DATE: March 08, 2018

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings