BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020679

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO ADD WITNESSES

APRIL 12, 2022

On February 18, 2022, Student filed a request for due process naming San Bernardino City Schools. On February 22, 2022, the Office of Administrative Hearings, known as OAH, issued a scheduling order which stated the parties had to declare their witnesses to each other in writing three business days before the Prehearing Conference, known as PHC. On March 23, 2022, the parties filed and served their PHC statements. On March 28, 2022, OAH held a PHC and issued an order. The PHC Order stated that the parties were ordered to meet and confer, and develop a joint witness list for the first day of hearing. The PHC Order stated the parties represented they were not contemplating any other motions, and that any new motions brought less than three business days before that prehearing conference had to be supported by a

declaration establishing good cause why the motion was not timely filed. The parties uploaded their evidence into Case Center on March 29, 2022. The five-business day disclosure deadline was on March 29, 2022. (Ed. Code, § 56505, subd. (e)(7).)

On April 5, 2022, the first day of hearing began. On April 7, 2022, the second day of hearing was held. On April 11, 2022, Student filed a notice of additional witnesses. Student requests leave to add eight additional witnesses to the hearing, including the Student's maternal grandmother who died two years ago. On April 11, 2022, San Bernardino City School District filed an opposition.

At hearing, on April 12, 2022, the ALJ heard oral argument.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act 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).)

Education Code section 56505, subdivision (e)(7), states that a party has the right to receive the list of intended witnesses and a summary of their expected testimony five days prior to the start of the due process hearing.

Education Code section 56505.1, subdivision (h), states the hearing officer has discretion to limit the number of witnesses and the amount of time allowed for their testimony.

The PHC Order states a party shall not be permitted to call any witnesses which were not timely disclosed except for good cause stated, supported by a written

declaration under penalty of perjury, and at the discretion of the Administrative Law Judge.

Student seeks to add eight new witnesses after two days of hearing. Student seeks to add

Mayo Hernandez, a special education secretary;

Anna Lopez, a special education preschool program coordinator;

Amber Liu, a school psychologist;

Trent Rowell, a special education coordinator;

Beverly McCarthey, psychological services;

Rosa Monages, psychological services;

Sonia Williams, Department of Children and Family Services; and

Kathlyn Hermes.

Student's declaration in support of the new list of witnesses states there is good cause for late notice. Student says it the gravity of these extremely relevant witnesses excuses the late notice. Student alleges she will suffer great prejudice if she is not allowed to call these eight witnesses. Student explains that the witnesses have personal knowledge of three of San Bernardino's exhibits which bear on the issue of notice and they would not be able to fully prosecute their case without them. Student claims the relevance of these witnesses and the totality of the circumstances constitute good cause to testify at the due process hearing.

Both Student and San Bernardino uploaded their exhibits on March 29, 2022, and had access to view each other's exhibits.

While Student counsel Sheila Bayne's declaration addresses whether the anticipated witnesses' testimony is material and relevant, she fails to describe why such late notice should be permitted. Student was aware of these documents on March 29, 2022.

Student counsel Burgermeister explained during the hearing he became aware of the confusion surrounding Exhibit D-1 and needed witness Anna Lopez and witness Mayo Hernandez to explain it. He conceded the remaining witnesses were not as important to his case. He withdrew the request for Student's deceased maternal grandmother to testify.

San Bernardino City School District counsel Kinsey was concerned about prejudice to her client about the late notice of these witnesses. She explained the most important witness was student's parent, who did not participate that day and did not testify when scheduled. Counsel Kinsey also explained counsel Burgermeister could cross-examine Anna Lopez if she chose to call her after parent testified. Counsel Kinsey explained Mayo Hernandez no longer works for the district.

ORDER

1. Student may examine Anna Lopez on April 14, 2022 at 1:00 p.m.
2. Student's parent is scheduled to testify on April 14, 2022 from 9:30 a.m. to 12:00 p.m. Student's counsel must notify OAH of any difficulties with her scheduled testimony by April 13, 2021, 4:00 p.m.
3. Student's request to call the remaining listed witnesses is denied.

4. San Bernardino City Schools may call Anna Lopez and Latashia Kelly during their case in chief on April 14, 2022.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings