BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013080296
MANTECA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013050805 ORDER DENYING MOTION TO REOPEN EVIDENTIARY RECORD

This matter was heard before Administrative Law Judge Deidre L. Johnson (ALJ), Office of Administrative Hearings (OAH) on September 10 through 12, 2013, in Manteca, California. The evidentiary record was closed and the matter was submitted and continued to permit the parties to file written closing arguments.

Effective September 19, 2013, Student filed a Motion to Reopen the Evidentiary Record, accompanied by Parent's declaration under penalty of perjury and three exhibits. On September 23, 2013, District filed a response opposing the motion. On September 24, 2013, Student filed a reply.[1]

APPLICABLE LAW

Special education law does not address the reopening of the evidentiary record after the hearing. Using civil law principles as guidance, the reopening of a case to receive additional evidence is generally a matter within the trial court's discretion. A denial of a request to reopen may be an abuse of discretion. (*Horning v. Shilberg* (2005) 130 Cal.App. 4th 197, 208, citing *Rosenfeld, Meyer & Susman v. Cohen* 191 Cal.App. 3rd 1035, 1052-53.)

[1] Documents faxed to OAH after 5:00 p.m. on a weekday are deemed filed with OAH as of the next business day. Student's motion and reply were both faxed to OAH during the evening hours and therefore filed in the case docket the next day.

Education Code section 56505, subdivision (e)(7), requires the parties to a special education dispute to disclose their documents to each other at least five business days prior to the hearing. Education Code section 56505.1, subdivision (f), authorizes the ALJ hearing the case to use his or her discretion to bar introduction of any documents not disclosed to the other party, without the consent of the other party, as required by section 56505, subdivision (e)(7). Although prior OAH orders do not carry weight as precedence, they may provide persuasive guidance. (Cal. Code Regs., tit. 5, § 3085.) In *Student v. Saddleback Valley Unified School District,* OAH Case Number 2011040670, Order Denying Motion to Reopen Hearing, etc., the ALJ denied Student's motion because she did not provide good cause in the motion as to why she had failed to include the proposed document on her exhibit list, in her binder disclosed prior to hearing, or at hearing.

DISCUSSION

Student's motion to reopen the record seeks to admit two of his prior individualized education programs (IEP's) into evidence: an IEP dated January 15, 2010 (proposed exhibit number S-81), and an IEP dated January 14, 2011 (proposed exhibit number S-82).[2] The motion and Parent's declaration assert that the IEP's are relevant to the issues in the case pertaining to Student's prior educational placement at Children's Home of Stockton (CHS), were discussed during the hearing in witness testimony, are being offered only for a limited purpose, and will not result in any prejudice to the District. District argues that Parent failed to explain why he did not disclose the exhibits before or during the hearing, the documents are not relevant to the issues, and District will be prejudiced because it did not have the opportunity to examine or cross-examine witnesses regarding the exhibits during the hearing.

On August 30, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson. ALJ Marson issued an order following the PHC dated September 3, 2013, which provided, in pertinent part, as follows:

> 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.

At the close of the hearing, the undersigned ALJ instructed the parties on the record that if either wanted to move to submit more documents, the requesting party should include a declaration under penalty of perjury as to why the documents had not been disclosed to the other party in compliance with the law and presented at hearing. In connection with the present motion, Student has not complied with these instructions. Parent has not presented

[2] Student's third exhibit attached to his motion consists of email correspondence with the attorney for the District regarding the motion.

any explanation as to why he did not include the January 2010 and January 2011 IEP's in Student's PHC statement, or in his exhibit binder disclosed to the District prior to hearing, or request to add the IEP's as exhibits during the hearing. In Student's reply to District's opposition, Parent claims that the omission of these records was "inadvertent" without further explanation. Student claims he is offering the new exhibits "for a limited purpose." However, he is asking for the documents to be admitted as direct evidence of Student's January 2010 and 2011 IEP's, and does not seek to limit their use in any way. But Student failed to adhere to the PHC order, or disclose the documents to District at least five business days in advance of the hearing as required by law. The documents are therefore subject to exclusion.

If good cause is established, OAH would next look for prejudice and weigh the equities in ruling on the motion. Here, however, Student has not made any showing of good cause. Student's citation to the ALJ's order dated June 18, 2012, reopening the record in *Student v. Cupertino Unified School District*, OAH Case Number 2012020850, is not persuasive as that order involved distinguishable circumstances. There, English was not the first language of the Parent, who realized and disclosed his inadvertence on the record at the end of the hearing and the omitted documents were relevant to the family's proposed remedies.

In the present case, Student's January 2010 and January 2011 IEP team meetings are not at issue in this proceeding and the IEP's merely have historical value. Student does not claim that any information set forth in the proposed IEP documents requires any witness to be recalled to the stand and does not point to any material information in the documents except to claim generically that they will "supplement" the record. The fact that District was aware of the documents and witnesses may have testified about these historical team meetings does not automatically render the documents themselves relevant or require reopening the record to admit them. Overall, Student has failed to establish good cause to reopen the record.

ORDER

Student's motion to reopen the evidentiary record is denied.

Dated: October 1, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings