BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2014120525
v.	ORDER GRANTING STUDENT'S MOTION TO ALLOW ADMITTANCE OF DOCUMENTARY EVIDENCE (FINANCIAL RECORDS)
SAN DIEGO UNIFIED SCHOOL DISTRICT.	

On December 3, 2014, Parents, on behalf of Student, filed a request for due process (complaint) naming San Diego Unified School District. At the time, Parents were represented by counsel. The complaint listed various issues, all of which requested the remedy of reimbursement from District for Parents' costs in unilaterally placing Student at the Discovery Ranch, a residential treatment center in Utah.

Parents' counsel withdrew as attorney of record on February 17, 2015; Parents proceeded as self-represented litigants. On February 27, 2015, a prehearing conference was held before Administrative Law Judge Paul H. Kamoroff. Parents appeared on behalf of Student and attorney Amy J. Bozone appeared on behalf of District. ALJ Kamoroff thereafter issued an Order Following Prehearing Conference, which stated at paragraph 3:

> Parties shall serve each other an updated exhibit list which delineates specific exhibits no less than five business days prior to the first day of hearing. Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists 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.

The PHC order also stated at paragraph 11:

> Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

The parties timely exchanged documentary evidence and the three-day hearing started on March 17, 2015, before ALJ Clifford H. Woosley. Father and Mother appeared on behalf of Student. Attorney Bozone appeared for District, with Special Education Administrator

Jennifer Parks-Orozco as the District representative. Father was the first witness and completed his testimony. Mother, however, testified intermittently over the course of the hearing, due to the scheduling of other witnesses. On the third and last day of hearing, Mother testified about Parents' expenses associated with their placement of Student at Discovery Ranch. Mother referred to Student's Exhibit 15, "Expenses," which she assembled as part of Student's evidence binder. Exhibit 15 contained a spreadsheet accounting of expenses with copies of various credit card statements confirming payments associated with the listed expenses.

Attorney Bozone, on cross-examination of Mother, established that Exhibit 15 did not include any invoices or billings, documenting the expenses. The spreadsheet accounting was not evidence but merely an assemblage of claimed expenses. Exhibit 15 provided admissible evidence of payments and payees, but did not include admissible documentary evidence of the services or items for which payments were made. This is typically demonstrated by invoices, billings or receipts.

Mother testified that she believed that what she submitted was in conformance with the prehearing conference order, which specified the reimbursement claim should be supported by admissible evidence of the expenditures. Additionally, Mother testified that a copy of all expenses was given to District at the resolution session, which Mother attended via telephone and Father personally attended with their attorney.

Mother said that she had the invoices and receipts and asked that they be admitted as evidence. District objected, saying that it was entitled to a timely exchange of the documentary evidence before hearing. ALJ Woosley denied Mother's request, noting that he would provide Parents an opportunity to file a written motion and District time to respond.

Mother then testified as to the expenses listed in Exhibit 15's spreadsheet accounting. She explained what each expense was for, why or how it was related to the Discovery Ranch placement, when the expense occurred, how Parents paid, and when Parents paid. District had an opportunity to examine Mother regarding the claimed expenses.

At the conclusion of hearing, ALJ Woosley provided the parties with a briefing schedule for Parents' motion to admit the additional financial documents. On March 25, 2015, Parents filed their Motion to Submit Evidence of Expenses, supported by Declaration of Mother. District filed opposition on March 30, 2015, supported by the Declaration of Jennifer Parks-Orozco.

ANALYSIS

Education Code section 56505, subdivision (e), states that a party is 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.

Student contends that the failure to include the invoices or billings in Exhibit 15 was based on Mother's belief that the proof of expenditures by admissible evidence, referred to in paragraph 11, required documentation of the payment of expenses. Mother is not an attorney, the prehearing conference order did not define "admissible evidence," and paragraph 11 refers to "expenditures," which she understood as proof of payment. Further, Mother believed that District already possessed the invoices and releases, which documented the expenses. Parents did not intend to deceive or deny District evidence with which to evaluate Student's reimbursement claims.

District opposes, contending Parents have failed to demonstrate good cause. District cites to its legal entitlement of timely exchange of documentary evidence, as well as the admonition contained in paragraph 11 of the prehearing conference order. District further refers to various prior OAH orders, denying requests to reopen the record and admit evidence. District notes that "inadvertency" was deemed an inadequate showing.

Here, however, the record is not closed and needs not be reopened. Further, Parents are not claiming inadvertency as the basis for not including the invoices and receipts. Just the opposite occurred. Mother demonstrated that she was attentive to the documentary due process procedures, assembled the evidence binders, timely exchanged the evidence, and followed – as she interpreted the prehearing conference order – in assembling the financial documentation. Mother assembled and included a spreadsheet, listing every expense. No evidence suggests that Parents attempted to deceive the District or the ALJ regarding

expenses associated with the Discovery Ranch placement. Though an educated individual, Mother did not have any prior experience with court or hearing rules and procedures. She was a layperson who has demonstrated she sincerely attempted to follow ALJ Kamoroff's prehearing conference order. Parents have sufficiently demonstrated good cause for their request to admit the additional documentary financial evidence.

District asserts that, even if good cause exists, it would be substantially prejudiced by the admission of the exhibits, having been denied the opportunity to call or examine witnesses relevant to the documentation. In support, the Declaration of Jennifer Parks-Orozco stated that the District had not previously been provided the invoices and receipts to which Mother referred. Ms. Parks-Orozco personally attended the resolution session and stated that she did not receive the documents. She further noted that she talked to others who attended the resolution session; they told her they do not recall receiving the financial documents to which Mother refers.

District has not demonstrated that it would be substantially prejudiced by the admission of the additional financial documentation. Even if District did not have possession of the invoices, billings, or receipts, the expenses were listed on Exhibit 15's spreadsheet. Also, Mother testified about the listed expenses, for which Parents provided proofs of payment, sufficiently identifying each expense to enable District to argue the expense's appropriateness. Production and admission of the additional financial documents will not substantially prejudice District.

Accordingly, Student has demonstrated good cause for the admission of the additional documents. However, the additional documentary evidence is limited to the expenses listed in Exhibit 15's spreadsheet accounting. Further, any ambiguity as to any expense will cause the administrative law judge to exclude the expense from consideration for reimbursement, should Student be so entitled.

ORDER

1. Student's Motion to Submit Evidence of Expenses is granted.

2. The additional documentary financial evidence is limited to the expenses listed in Exhibit 15's spreadsheet accounting

3. Student shall serve the additional evidence upon the Office of Administrative Hearings by faxing the documents to OAH's faxination line at 916-376-6319, no later than 5:00 p.m. (Pacific Time), Tuesday, April 7, 2015.

4. Further, Student shall provide District's counsel with the additional evidence by faxing the documents to the attention of Amy J. Bozone at 619-725-5639, no later than 5:00 p.m. (Pacific Time), Tuesday, April 7, 2015.

5. Student shall file a properly executed proof of service with OAH, demonstrating service upon District in accordance with this order.

6. Any failure to abide by the terms of this order will result in the exclusion of the additional documentary financial evidence.

DATE: April 3, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings