

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023110049

ORDER DENYING MOTION TO REOPEN RECORD

FEBRUARY 1, 2024

On January 9, 2024, Administrative Law Judge Tiffany Gilmartin, Office of Administrative Hearings, continued the due process hearing until January 29, 2024, to allow parties to file their closing arguments. On January 29, 2024, Student filed her closing brief. Fremont filed its closing brief approximately six minutes after Student. Following the submission of her closing brief, Student filed a motion to reopen the record to correct Parent's testimony. Fremont did not respond to Student's motion to reopen the record.

Requests to reopen a trial record is a flexible and case specific matter. A court abuses its discretion if its refusal to reopen works an 'injustice' in the particular circumstances. *Rivera-Flores v. Puerto-Rico Tel. Co.*, 64 F.3d 742, 746 (1st Cir. 1995) (citing *Gas Ridge, Inc. v. Suburban Agric. Properties, Inc.*, 150 F.2d 363, 366 (5th Cir.

1945)). The Individuals with Disabilities Education Act does not specifically address reopening the record after the evidentiary phase is complete but before a final decision is issued. Legal guidance exists that helps inform the appropriate course. Specifically, three factors are considered when reviewing a motion to reopen the record. The evidence introduced is especially important and probative; the moving party's explanation for failing to introduce the evidence earlier is bona fide; and reopening the case will cause no undue prejudice to the nonmoving party. (*Id.*; see also *Fed. Trade Com. v. Infinity Group Services*, No. SA CV 09-0977 DOC (MLGx), 2011 WL 13341069, at *2 (C.D. Cal. Sept. 26, 2011). *USA v. Montrose Chem.*, No. 2:90-CV-03122-R, 2019 WL 13116388, at *2 (C.D. Cal. Oct. 16, 2019).)

In the instant case, Parent testified on January 2, 2024. The hearing reconvened on January 9, 2024. Parent was not present on January 9, 2024. The matter was continued until January 29, 2024, for parties closing briefs. Student filed her motion on January 29, 2024, after she filed her closing brief with OAH. At no time did counsel for Student raise concern about the correctness of Parent's testimony until after both parties had submitted their closing briefs.

Student failed to demonstrate the proffered evidence was important or probative. Student relied on Cal. Code Regs. Tit 1 § 1048 (b) which provides a mechanism for fixing a "clerical error or make minor or technical changes." Student did not seek to fix a clerical error but sought to amend her substantive testimony. Moreover, Student was

silent as to why she failed to correct the testimony until after both parties submitted their closing arguments. For the above reasons, Student's motion to reopen the record is denied.

IT IS SO ORDERED.

Tiffany Gilmartin

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings