

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

UNION SCHOOL DISTRICT.
OAH CASE NUMBER 2026060619

ORDER DENYING STUDENT'S REQUEST TO STRIKE
TESTIMONY;
ORDER GRANTING REQUEST FOR RECONSIDERATION;
AND
ORDER DENYING STUDENT'S REQUEST TO EXCLUDE
EXHIBIT

SEPTEMBER 17, 2026

STUDENT'S REQUEST TO STRIKE TESTIMONY

A virtual Due Process Hearing, or DPH, in the above matter took place over the span of eight days and concluded on September 3, 2026. On the afternoon of the last day of hearing, Union School District called Dr. Jarice Butterfield to provide expert testimony. Shortly after Dr. Butterfield's testimony began, Parent left the virtual hearing.

The ALJ proceeded with hearing and Union School District's examination of Dr. Butterfield continued in Parent's absence. Approximately 50 minutes into Dr. Butterfield's testimony, Parent called into hearing telephonically and requested that the ALJ resend Parent the Zoom link. The ALJ did so, and Parent rejoined hearing through Zoom. The following day, on September 4, 2026, the Office of Administrative Hearings, or OAH, provided Parent a link where she could access an audio recording of the entire hearing, including the portion where she was absent.

On September 4, 2026, Student filed a "Notice of Involuntary Exclusion from Hearing, Denial of Cross Examination, and Request for Immediate Corrective Relief." Student alleged that the ALJ improperly proceeded with hearing in Parent's absence, and, once Parent rejoined, improperly limited Parent's cross examination of Dr. Butterfield to only the testimony for which Parent was present. Student requested that either the administrative record be reopened to recall Dr. Butterfield as a witness and allow Parent to conduct a more complete cross examination, or that Dr. Butterfield's testimony be stricken in its entirety. On September 8, 2026, Student filed a "Motion to Strike Dr. Butterfield's Testimony in its Entirety for Denial of Hearing Access, Contemporaneous Objections, and Meaningful Cross Examination" with supporting Declaration, whereby Parent withdrew her request to reopen the record and instead requested solely that Dr. Butterfield's testimony be stricken in its entirety.

On September 11, 2026, Union School District filed an "Opposition to Motion to Strike Butterfield Testimony." Union objected to Student's motion, asserting that Parent's absence was a foreseeable part of an impermissible pattern of causing undue delay over the course of the multi-day hearing. Union also asserted that once Parent did rejoin hearing, she was given ample opportunity to cross examine Dr. Butterfield, and that Dr. Butterfield's testimony should not be stricken.

On September 14, 2026, Student filed a "Reply in Support of Motion to Strike Dr. Butterfield's Testimony in its Entirety for Denial of Hearing Access, Contemporaneous Objections, and Meaningful Cross Examinations."

By Parent's own admission, her challenges logging in to hearing using the Zoom platform were foreseeable. On at least one other prior hearing day, Parent expressed getting an error message similar to the one which she received during Dr. Butterfield's testimony, and yet was still able to participate in hearing via Zoom on all other seven days of hearing. When Parent called into hearing during Dr. Butterfield's testimony, Parent represented that she was calling in from a public library and was unable to access the government Zoom application. Once Parent changed location, Parent was able to log into hearing via Zoom, using the same link from earlier that morning which the ALJ resent to her.

Throughout the seven hearing days prior, the ALJ frequently halted hearing pursuant to Parent's request, based on Parent's expressed need to address her own technology issues or change her physical location. On several occasions, the ALJ reminded Parent of her responsibility to ensure her access to a reliable power source, stable internet connection, and a safe, quiet, and confidential space from which to access hearing, and to do any troubleshooting necessary before each hearing day began. By day eight of hearing, Parent had already been admonished that hearing would proceed without undue delay.

Most importantly, Parent demonstrated the actual ability to join hearing telephonically, independent of the virtual Zoom link, during Dr. Butterfield's testimony, and did so. Accordingly, it was Parent's choice to continue attempting to log in via Zoom for nearly 50 minutes rather than calling in telephonically as soon as she realized she was unable to access the Zoom link.

Once Parent rejoined hearing, the ALJ initiated Parent's cross examination of Dr. Butterfield by asking Parent if she had any questions based on what she had heard from Dr. Butterfield. The ALJ did not make any order limiting Parent's cross examination to only what she had heard. In fact, Parent's cross examination included a line of questioning where Parent asked Dr. Butterfield to opine on data provided by Parent, an entirely new area of testimony. Parent's cross examination of Dr. Butterfield concluded only when Parent stated that Parent had no further questions.

Student's request to strike Dr. Butterfield's testimony is denied. Similarly, the record will not be reopened for further examination of Dr. Butterfield. The ALJ, however, notes Parent's objection to the testimony for the record. Any reliance on Dr. Butterfield's testimony, if at all, in the final Decision in this matter will be discussed more fully, and Parent's objection considered.

STUDENT'S REQUEST TO RECONSIDER THE ADMISSION OF DISTRICT'S EXHIBIT D353

Exhibit D353 was one of Union's exhibits, uploaded into Case Center, the electronic exhibit repository for hearing. Union offered Exhibit D353 as a work sample that Union attributed to Student, created during the current school year and after the time period at issue in this case. Union moved, and OAH admitted, Exhibit D353 into evidence during Dr. Butterfield's testimony, during Parent's absence from hearing.

Dr. Butterfield testified the last day of hearing. The day after hearing, OAH provided Parent with access to the audio recording of the entire hearing, including the portion of hearing she had missed. Parent reviewed the hearing audio, and, on September 9, 2026, Student filed a "Motion to Reconsider and Vacate the Admission of District Exhibit D353 and to Strike D353 and All Derivative Reliance from the Evidentiary

Record.” Student moved that OAH reconsider its decision to admit District’s Exhibit D353 during Parent’s absence from hearing.

On September 10, 2026, Union filed an “Opposition to Petitioner’s Motion to Reconsider and Vacate D353.” Union argued against reconsideration on the basis that Parent’s absence from hearing was foreseeable and avoidable by Parent, and Parent should be barred from objecting to an exhibit admitted in her absence. On September 11, 2026, Student filed a “Reply in Support of Motion to reconsider and Vacate the Admission of District Exhibit D353 and to Strike all Derivative Reliance.”

RECONSIDERATION IS GRANTED

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Student offers new facts that warrant reconsideration of the admission of District’s Exhibit 353 into evidence. Specifically, Parent has since had an opportunity to review the audio of the portion of Dr. Butterfield’s testimony when District’s Exhibit 353 was admitted into evidence, during Parent’s absence. The motion for reconsideration is granted.

DISCUSSION

Parent argues that OAH should exclude D353 from evidence because the document was:

- Not authenticated as a work sample attributable to Student;
- Untimely disclosed to Student. Specifically, Union uploaded the exhibit on the first day of hearing, instead of five calendar days before hearing as required by law; and
- Irrelevant because Union purported the document to have been created after the time period at issue.
- Union argues that:
- Any concerns regarding authenticity or foundation of the work sample document impact the weight given to it but do not warrant exclusion of it; and
- A work sample purportedly created by Student after the time period at issue is relevant in demonstrating how Student responded to the interventions offered by Union.

Union, as the party offering the exhibit, bore the responsibility of authenticating the document, and did not do so. Union attempts to overcome the authenticity and foundation concerns by Dr. Butterfield's indication that the scores on the document were consistent with the information Dr. Butterfield had received about Student's performance. This is not sufficient. Union introduced no testimony or other evidence to establish that Student was in fact the generator of D353. The admission of Exhibit D353 will not be vacated, but no weight will be given to this document. Because no weight will be attributed to D353, this Order does not reach the parties' arguments regarding timeliness or relevance.

ORDER

1. Student's request to strike Dr. Butterfield's testimony is denied.
2. The record will not be reopened for further examination of Dr. Butterfield.
3. Reconsideration of the admittance of D353 is granted.
4. Exhibit D353 will not be excluded from evidence.
5. Exhibit D353 will be given no weight.

All other requests for relief are denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Claire Yazigi". The script is cursive and fluid.

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings