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 2023050768

ORDER DENYING MOTION TO QUASH

SEPTEMBER 8, 2023

During the fourth day of the due process hearing in this matter, on August 29, 2023, Fremont Unified School District called witness Sherry Burke, Licensed Educational Psychologist, to testify as a percipient and expert witness. On August 31, 2023, Student filed a "Motion To Quash, Dismiss And/Or Remove From Consideration Sherry Burke's, Ed. D. Testimony -- Conflict Of Interest," in which Student challenged the credibility of Ms. Burke's testimony. On August 31, 2023, Fremont opposed.

The motion is denied. Credibility determinations are within the discretion of the administrative law judge and do not warrant exclusion of evidence. Ms. Burke's testimony was taken under oath. (Gov. Code, §11513, subd. (a).) Student had the

opportunity to cross-examine the witness and to impeach her testimony (Gov. Code, §11513, subd. (b).) Her testimony, as a percipient and expert witness, was relevant. (Gov. Code, §11513, subd. (c).) The probative value of the evidence was not outweighed by undue consumption of time. (Gov. Code, §11513, subd. (f).) Therefore the evidence is admissible and shall not be excluded. Student's arguments go to the weight of the evidence, not its admissibility.

IT IS SO ORDERED.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings