BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>NEWPORT-MESA UNIFIED SCHOOL DISTRICT, | OAH Case No. 2016080996 |
| PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>NEWPORT-MESA UNIFIED SCHOOL DISTRICT. | OAH Case No. 2016050515<br><br>ORDER DENYING MOTIONS IN LIMINE |

On May 4, 2016, Student filed a due process hearing request against Newport-Mesa Unified School District. Student filed a second action on August 16, 2016. The two actions were consolidated here by order dated September 1, 2016. A prehearing conference was held on January 30, 2017. This matter is currently set for hearing beginning on February 14, 2017.

On February 6, 2017, Student filed a motion in limine to exclude the testimony of certain witnesses employed by District. On that same date, Student filed a further motion to exclude certain documents from being used at hearing in this matter. District has not filed in opposition to these motions.[1]

## DISCUSSION

Item #9 of the prehearing conference order of January 30, 2017, stated that the parties represented at the conference that no pretrial motions were pending or contemplated. The order further directed that any motions filed after the date of the order must be accompanied

[1] Because of the disposition of the motions, the adequacy of Student's service and his proofs of service of these motions is not discussed. Student is reminded that he must properly serve all motions on opposing counsel and include proof of service with all motions filed with the Office of Administrative Hearings.

by a declaration under penalty of perjury setting out good cause why the motion was not made at or prior to the prehearing conference. Student's motions in limine fail to include such declarations. Accordingly, the motions are denied without prejudice for failure to comply with the terms of the prehearing conference order.

Further grounds exist for denying the motions. The motion to exclude the testimony of witnesses is based upon Student's belief that the witnesses are biased against him and therefore will not testify truthfully. Presumed bias is no basis to bar witness testimony. Student will have the opportunity to cross-examine the challenged witnesses and may attempt to prove their bias and lack of candor through questioning and the presentation of contradictory evidence. A motion in limine to exclude witness testimony is not the proper means to that end.

Student has also moved to bar introduction of the materials documenting the November 7, 2016 and November 18, 2016 individualized educational program team meetings because Student believes the documents misleadingly imply that the plan was completed at the November 18, 2016 meeting. That motion is also improper. Interpretation of evidence is a matter for the trier of fact to determine after the completion of the hearing, not by ruling on a motion in limine made beforehand. While the November 2016 IEP team meetings occurred after the provision of services to Student in August and September of 2016, their relevancy may be contested by Student at hearing if those documents are offered by District.

Student's motions in limine are denied without prejudice.

IT IS SO ORDERED.

DATE: February 10, 2017

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings