BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: TRACY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017010024 AMENDED[1] ORDER DENYING STUDENT'S MOTION IN LIMINE

On April 3, 2017, Student filed a motion entitled "Motion to Limit Timelines Under Issue 1"supported by a declaration under penalty of perjury of Student's counsel. Student asserts that she is seeking to "limit the issues and evidence" that Tracy Unified School District may introduce into evidence due to its failure to timely produce requested educational records. During the prehearing conference on April 4, 2017, Student clarified that she brought this motion to prohibit Tracy from introducing evidence of events subsequent to the date it filed its request for due process hearing on December 27, 2016. Student's motion is deemed a motion in limine.

On April 5, 2017, Tracy filed an opposition to Student's motion on the grounds that it is not supported by logic or any legal authority. Tracy argues that any evidentiary objections should be made at the time of hearing.

APPLICABLE LAW

A party requesting a due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the complaint, unless the other party agrees otherwise. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

California Evidence Code Section 350 states, "No evidence is admissible except relevant evidence." Relevant evidence is defined as evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evidence Code, § 210.) Further, "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible person are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or stature rule which might

[1] This Order is amended to reflect that this matter was brought by Tracy Unified School District against Student. The only change is to the caption which is amended to correctly identify Tracy as the moving party.

make improper the admission of the evidence over objections in civil actions." (Govt. Code §11513, subd. (c).)

The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Govt. Code §11513, subd. (f).) In addition, Education Code section 56505.1, subdivision (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

The Ninth Circuit has observed that after-acquired evidence may shed light on the objective reasonableness of a school district's prior actions. (*E.M.* v. *Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1006 [later obtained evidence, such as assessments, may supplement the record if the evidence is relevant, non-cumulative, and otherwise admissible].) The Ninth Circuit held that, in reviewing a district's actions, courts may look to evidence not known to the decision makers at the time as "additional data, discovered late in the evaluation process, may provide significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." (*Ibid*).

Similarly, in upholding a child find violation and determination of eligibility pursuant to emotional disturbance, a Pennsylvania federal district court concluded,

> These types of proceedings are necessitated upon the finding that the school district failed to timely discover a subsequently diagnosed disability. While hindsight can seldom be used in law to impute to a party something it should have known, here it is precisely the device used to adequately assess the student's needs and the school district's obligations at the relevant time.

(*Jana K. v. Annville-Cleona School Dist.* (M.D.Pa. 2014) 39 F.Supp.3d 584, 601-602.)

DISCUSION

Student's written motion lacks clarity. It appears that Student seeks to limit both the issue for hearing and evidence that may be introduced at the time of hearing. It is important to note that this matter was filed by Tracy, and the sole issue to be adjudicated is whether Tracy's fall 2016 psychoeducational assessment of Student is legally compliant. Tracy has not moved to amend its complaint and this remains the sole issue for hearing. Student's contention that Tracy intends to expand the hearing issue is unsupported. There is no legal basis for Student to move to limit Tracy's issue, to that identified as the sole hearing issue.

Student next appears to contend that Tracy should be prohibited from introducing any evidence of events that occurred subsequent to the December 27, 2016 filing date. Student

fails to provide legal support for this proposition. Although OAH orders may be considered persuasive authority, the orders cited by Student do not support her contention. For instance, in *Parent v. Panama Buena Vista*, OAH Case No. 2014040519, the order limiting hearing issues specifically noted that it was not intended to prevent the ALJ at hearing from determining if evidence of events or conduct occurring after the filing of the complaint was admissible; or to otherwise prevent the ALJ from taking into account the student's circumstances at the time of hearing. Contrary to Student's contention, the Ninth Circuit has expressly determined that such additional, after-acquired evidence may shed light on the reasonableness of a school district's prior actions.

Finally, the declaration from Student's counsel focuses exclusively on Tracy's failure to timely produce requested records and the resulting prejudice to Student in preparing for hearing. Student seems to contend that because Tracy did not timely produce Student's education records pursuant to a records request, it should be prohibited from using such documents at hearing. Student's argument is without legal support and is not persuasive. OAH ordered Tracy to produce all requested education records that it retains by April 7, 2017. Student was then afforded a continuance to be able to have sufficient time to review such records and prepare for hearing. Student requested a short continuance to April 11, 2017, and represented that this would afford her sufficient time to prepare for hearing. A continuance to allow Student sufficient time to review her education records addressed the prejudice resulting from Tracy's failure to timely respond to the records request. Student fails to provide any authority for excluding evidence as a remedy for Tracy's late production.

Tracy is correct that Student has the right to object to any evidence at the time of hearing. Student's motion in limine to limit the issue and evidence at hearing is without legal support and is denied. The ALJ will consider and rule on any evidentiary objections at hearing.

ORDER

1. Student's motion in limine is denied.

DATE: April 10, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings