BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GREENFIELD UNION SCHOOL DISTRICT.	OAH CASE NO. 2013060737 ORDER GRANTING MOTION TO ALLOW TELEPHONIC TESTIMONY AND DENYING MOTIONS TO EXCLUDE EVIDENCE OR CONTINUE THE DUE PROCESS HEARING

This matter is scheduled for due process hearing beginning on October 15, 2013. On Oct. 10, 2013, the Greenfield Union School District (District) filed a motion to allow the telephonic testimony of Martina Sholitin. It also filed a motion to exclude any evidence presented by Student on the ground that Student had not served on the District the evidence binder and notice of witnesses required by the Prehearing Conference Order and Education Code section 56505, subdivision (e)(7), or in the alternative to continue the matter until Student can produce such an evidence binder five business days before the hearing. On October 11, 2013, Parent advised the Office of Administrative Hearings (OAH) that she does not plan to file a response to the motions.

Motion for Telephonic Testimony of Martina Sholitin

The Administrative Law Judge (ALJ) has discretion to allow a witness to testify by telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) The District's motion makes an adequate showing that Ms. Sholitin is now sufficiently distant from the site of the hearing and involved with her new duties that telephonic testimony is appropriate. The motion is unopposed. Ms. Sholitin will be allowed to testify on Wednesday, Oct. 16, 2013, at 12:00 P.M. as requested.

Motion to Exclude All Evidence Offered by Student

The District's motion to exclude all evidence offered by Student is overly broad and premature. The District is correct that it has a right to receive from Student, at least five business days before the hearing, an evidence binder containing copies of all exhibits Student plans to introduce, and to exclude any evidence not so produced. (Ed. Code, § 56505, subds. (e)(7), (8).) However, the ALJ has the discretion, at hearing, to admit or reject evidence not timely disclosed. (Ed. Code, § 56505.1, subd. (f).) That discretion cannot be soundly exercised without knowing whether Parent will actually attempt to introduce evidence or witnesses not timely disclosed, or whether she will rely instead on documents produced by

the District. On the instant motion it is also not possible to determine what, if any, prejudice to the District might result from admission of documents not timely disclosed. The District' s motion to exclude evidence is therefore denied without prejudice to its renewal in the context of a particular document offered into evidence by Student at hearing.

Motion for Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Parent's failure to timely serve an exhibit binder does not constitute good cause for continuance. There is no indication that Parent intends to produce a binder at any time, and Parent has not, in response to the District's motion, asked for additional time to do so. There is therefore no showing that a continuance would result in the production of the required documents.

ORDER

1. The District's motion to allow Martina Sholitin to testify by telephone on Wednesday, October 16, 2013, at 12:00 P.M. is granted.

2. The District's motion to exclude all evidence offered by Student is denied without prejudice to its renewal in the context of a particular document offered into evidence by Student at hearing.

3. The District's motion for a continuance is denied.

Dated: October 11, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings