

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011110895

ORDER GRANTING MOTION TO
AMEND WITNESS LIST

The request for due process hearing in this matter was filed on November 28, 2011, and a prehearing conference (PHC) was conducted on December 21, 2011. The matter is set for due process hearing beginning on January 17, 2012.

On January 6, 2012, Student moved for leave to amend his witness list by adding Student's Fresno County Mental Health therapist, Paul Phipps. A declaration of Student's counsel states that, although Mr. Phipps became Student's new County therapist in July 2011, when his treatment changed from individual to group therapy, counsel did not learn of this event until after the PHC.

On January 9, 2012, the District filed an opposition to Student's motion on the grounds that 1) good cause for adding the witness was not shown, since Student's counsel could have learned of this development weeks earlier; 2) the declaration of Student's counsel is void because a place of execution is not stated; and 3) granting the motion would prejudice the District's case because it would be "impossible" for the District "to prepare its witness list" only one day before the exchange of witness lists was due.

While it would have been preferable that Student had made the request a few weeks earlier and identified the witness in his PHC Statement, Student's delay is not so extraordinary that he should be denied an important witness. The technical defect in Ms. Yama's declaration is outweighed by the fact that the District's claim of prejudice is accompanied by no declaration at all and by no explanation. Steps short of exclusion of the witness can be taken to ameliorate any prejudice the District might otherwise suffer.

In addition, Student's witness list already contains Fletcher Davis, Student's previous County Mental Health therapist, and a statement that he will testify about Student's behavior and conduct as it relates to his disabilities. Since the District would be preparing against that testimony anyway, it is not apparent how having an additional County therapist testify about the last six months would alter the District's strategy, and the District does not explain how it could.

Student's motion to add Paul Phipps to his witness list is granted without prejudice to any motion by the District to call additional witnesses to rebut Mr. Phipps' testimony or in any other way to ameliorate any prejudice the late addition of Mr. Phipps to Student's witness list might produce.

IT IS SO ORDERED.

Dated: January 12, 2012

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings