

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CENTER UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011120597

ORDER GRANTING MOTION TO
ADMIT DISTRICT EXHIBIT INTO
EVIDENCE

Administrative Law Judge Deidre L. Johnson, State of California Office of Administrative Hearings (OAH), heard this expedited disciplinary matter on January 31, February 1, 2, and 9, 2012, in Antelope, California. At the request of the parties, the record was held open and the matter was continued to February 17, 2012, for the submission of written closing arguments. On February 13, 2012, District filed a request to move District's Exhibit D3 into evidence on the ground that District had inadvertently withdrawn the exhibit from its exhibit binder. Parent did not file a reply.

APPLICABLE LAW AND DISCUSSION

Special education law does not address the reopening of the evidentiary record after the hearing. Using civil law principles as guidance, the reopening of a case to receive additional evidence is generally a matter within the trial court's discretion. A denial of a request to reopen may be an abuse of discretion. (*Horning v. Shilberg* (2005) 130 Cal.App. 4th 197, 208, citing *Rosenfeld, Meyer & Susman v. Cohen* 191 Cal.App. 3rd 1035, 1052-53.)

In this case, the record was not closed when the matter was continued to permit the filing of closing arguments. The record was closed at 5:00 p.m. on Friday, February 17, 2012. District's motion to add an exhibit was therefore timely before the record was closed. The record is clear that District's Exhibit D3 is not a new exhibit. It was disclosed to Student in compliance with Education Code section 56505, subdivision (e)(7) prior to the hearing, and was presented at hearing in the District's exhibit binder. At the close of the hearing, District withdrew Exhibit D3.

District is persuasive that its withdrawal of Exhibit D3 was inadvertent. Exhibit D3 is an individualized education program (IEP) for Student dated August 10, 2010, and was Student's first annual high school IEP. Exhibit D4, an IEP dated December 16, 2010, was admitted into evidence. However, that was an emergency IEP which supplemented

Exhibit D3. District's Exhibit D3 should therefore be admitted into evidence in order to complete the record of Student's relevant IEP's.

ORDER

District's Exhibit D3 is marked for identification and is admitted into evidence.

Dated: February 21, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings