UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 13-5690 FMO (JEMx)**	Date	**April 14, 2014**
Title	**J.G., a minor, by and through his Guardian Ad Litem, Nancy Jimenez v. Baldwin Park Unified School District, et al.**		

Present: The Honorable	Fernando M. Olguin, United States District Judge

Vanessa Figueroa	None Present
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

Proceedings: (In Chambers) Order Re: Pending Motion

Having received and reviewed all the briefing filed with respect to plaintiff J.G.'s Motion to Supplement the Administrative Record ("Motion"), the court concludes that oral argument is not necessary to resolve the Motion . See Fed. R. Civ. P. 78; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001).

INTRODUCTION

Plaintiff J.G. ("plaintiff"), by and through his guardian ad litem, Nancy Jimenez, brings this action pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., seeking review of the decision of the Baldwin Park Unified School District ("defendant") to deny plaintiff's request for a referral to the California School for the Deaf Riverside ("CSDR"). On February 3, 2014, plaintiff moved to supplement the evidence before the court with a Declaration and attached letter ("Declaration"[1]). (See Plaintiff's Motion to Supplement the Record). The Declaration describes the challenges he currently faces as deaf student at South Hills High School ("South Hills"), and his desire to attend the CSDR. (See Exh. A). For the reasons set forth below, the court grants plaintiff's motion.

DISCUSSION

The IDEA provides that, when reviewing an administrative due process hearing, the district court "shall hear additional evidence at the request of the party." 20 U.S.C. § 1415(i)(2)(C)(ii). The Ninth Circuit has interpreted "additional" to mean "supplemental" evidence.[2] Ojai Unified Sch.

[1] The court will refer to both J.G.'s formal declaration and his attached letter, (see Plaintiff's Motion to Supplement the Record at Exhibit ("Exh.") A), as "Declaration."

[2] "IDEA's requirement that courts consider additional evidence is grounded in the somewhat unusual nature of judicial review under the Act" whereby the court has a "continuing obligation to ensure that the state standards themselves and as applied are not below the federal minimums."

Dist. v. Jackson, 4 F.3d 1467, 1472-73 (9th Cir. 1993), cert. denied, 513 U.S. 825 (1994). "The proper inquiry [is] whether the [evidence is] relevant, non-cumulative, and otherwise admissible." Pajaro, 652 F.3d at 1006. Supplementation is appropriate to close "gaps in the administrative transcript" and to provide "evidence concerning relevant events occurring subsequent to the administrative hearing." Ojai, 4 F.3d at 1473. Courts need not admit evidence that merely "repeats or embellishes evidence taken at the administrative hearing." Pajaro, 652 F.3d at 1004. "[N]or should [courts] admit evidence that changes the character of the hearing from one of review to a trial de novo." Id. (internal quotations and citation omitted).

Here, plaintiff's Declaration is relevant to the determination of whether plaintiff is receiving the Free and Appropriate Public Education ("FAPE") to which the IDEA entitles him. See 20 U.S.C. § 1401(9). The Ninth Circuit examines four factors to evaluate the adequacy of a child's individualized education plan: (1) the educational benefits of full-time placement in a regular class; (2) the non-academic benefits of such placement; (3) the effect the child has on the teacher and other students in the regular class; and (4) the costs of mainstreaming the child. See Sacramento City Unified Sch. Dist., Bd. of Educ. v. Rachel H. By & Through Holland, 14 F.3d 1398, 1404 (9th Cir.), cert. denied sub nom. Sacramento City Unified Sch. Bd. of Educ. v. Holland, 512 U.S. 1207 (1994).

Plaintiff's Declaration sets forth the challenges he experiences as a deaf student at South Hills in communicating with his peers, participating in school events, and engaging in course work. (See Exh. A at 2 & 4). Plaintiff states that he wants to attend CSDR to improve his American Sign Language (ASL) skills and to make friends with other students who speak ASL.[3] (See id. at 4). Although school districts are not bound by the placement preferences of students and parents, see Gregory K. v. Longview School Dist., 811 F.2d 1307, 1314 (9th Cir. 1987) (holding that "an 'appropriate' public education does not mean the absolutely best or 'potential-maximizing'

E.M. ex rel. E.M. v. Pajaro Valley Unified Sch. Dist. Office of Admin. Hearings (Pajaro), 652 F.3d 999, 1005 (9th Cir. 2011).

[3] Defendant argues that plaintiff's failure at the hearing to testify about whether he wished to attend CSDR (see Administrative Record ("AR") at AR001969-AR001977), and his mother's testimony that he did not wish to attend CSDR (see AR at AR001802), preclude admission of the Declaration. (See Defendant's Opposition to Plaintiff's Motion to Supplement the Record ("Def's Opp.") at 4-6). However, defendant points to no authority that supports this proposition, and indeed concedes that "as might be expected [of a fifteen-year-old], [plaintiff's] opinion regarding CSDR is fluid and changing." (See id. at 4, n. 7). As discussed herein, the Declaration goes beyond stating plaintiff's preference to attend CSDR by describing his experience at South Hills since starting there after the hearing. (See Exh. A at 2 & 4). His newfound preference to attend CSDR stemming from his difficulty at South Hills is admissible evidence for the court's consideration.

education for the individual child . . . [or] the alternative that the family prefer[s].”), plaintiff’s Declaration is not a bare statement of his preference. It includes facts about plaintiff’s difficulty at South Hills and the reasons he wants to attend CSDR, (see Exh. A at 2, 4), which are pertinent to the FAPE inquiry. See Katherine G. ex rel. Cynthia G. v. Kentfield Sch. Dist., 261 F.Supp.2d 1159, 1174-75 (N.D. Cal. 2003), aff’d sub nom. Katherine G. v. Kentfield Sch. Dist., 112 F. App’x. 586, 589 (9th Cir. 2004) (admitting witness testimony that was excluded from the administrative hearing because, “regardless of whether their testimony was ultimately persuasive . . . [it] was worth consideration and discussion.”); Roe v. Nevada, 621 F.Supp.2d 1039, 1047 (D. Nev. 2007) (allowing evidence that the defendant preschool failed to report improper behavioral interventions by staff, in violation of state reporting requirements, as relevant to the adequacy of the child’s FAPE where plaintiff alleged staff abuse and mistreatment).

The Declaration’s relevance is not impaired by the fact that plaintiff wrote it after the hearing. “[A]dditional evidence includes, inter alia, evidence concerning relevant events occurring subsequent to the administrative hearing.” Pajaro, 652 F.3d at 1004 (internal quotations omitted). Plaintiff enrolled in South Hills after the hearing, and the Declaration describes his experience there thus far. The Ninth Circuit permits consideration of additional evidence obtained subsequent to the hearing that “may provide significant insight into the child’s condition, and the reasonableness of the school district’s action, at the earlier date.” Id. at 1006 (holding that the trial court improperly excluded an expert evaluation of the child on the basis that it was performed after the administrative hearing, and remanding for a determination of whether the evaluation was relevant); see, e.g., Ojai, 4 F.3d at 1473 (finding no error in the district court’s admission of officials’ affidavits recommending an alternative placement for the student submitted nearly one year after the hearing because the new recommendation reflected the student’s older age).

The evidence is not cumulative. In deciding whether to allow the testimony, the district court must consider “the important concerns of not allowing a party to undercut the statutory role of administrative expertise, the unfairness involved in one party’s reserving its best evidence for trial, the reason the witness did not testify at the administrative hearing, and the conservation of judicial resources.” Ojai, 4 F.3d at 1473 (internal quotations and citation omitted). Plaintiff testified at the administrative hearing below, but his testimony pertained solely to his experience in middle school. (See AR at AR001969-AR001977). Rather than an effort to undermine the administrative process or preserve evidence for trial, the Declaration is a description of plaintiff’s experience at South Hills since the unfavorable decision was rendered – evidence that was not available at time of the hearing. (See Exh. A at 2-4). It does not “repeat[] or embellish[] evidence taken at the administrative hearing[.]” Pajaro, 652 F.3d at 1004.

Finally, the Declaration does not risk changing “the character of the hearing from one of review to a trial de novo.” Pajaro, 652 F.3d at 1004 (internal quotations and citation omitted). The court will rely predominantly upon the administrative record in determining the adequacy of plaintiff’s FAPE, and plaintiff’s Declaration merely supplements the record with evidence that is not outcome determinative.

In short, plaintiff's Declaration is relevant, non-cumulative, and its consideration will not change the nature of review to a de novo trial. Its admission is thus a proper exercise of the court's "particularized discretion" to admit evidence helpful to "determin[e] whether Congress' goal has been reached for the child involved." Pajaro, 652 F.3d at 1005 (internal quotation and citation omitted).

This order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

CONCLUSION

Based on the foregoing, IT IS ORDERED that plaintiff's Motion to Supplement the Record **(Document No. 26)** is **granted**.

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