

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

M.M. & E.M.,

No. C 10-04223 SI

Plaintiffs,

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS’
MOTION TO SUPPLEMENT THE
RECORD**

v.

LAFAYETTE SCHOOL DISTRICT,

Defendant.

Plaintiffs moved to introduce additional evidence to supplement the administrative record. A hearing was held on this matter on October 28, 2011. For the reasons set forth below, the Court hereby GRANTS IN PART and DENIES IN PART plaintiffs’ motion to supplement the record.

BACKGROUND

This action, brought under the Individuals with Disabilities Education Act (“IDEA”) and Section 504 of the Rehabilitation Act, concerns a dispute over the educational opportunities provided to C.M., a child who has been identified as an individual with learning disabilities. This is the third of three lawsuits filed in the wake of two administrative due process hearings. M.M. and E.M., individually and on behalf of their son C.M, are suing the Lafayette School District (“District”) and the Lafayette School Board (“School Board”).

The District conducted an initial psychoeducational assessment of C.M. in April 2007. In September 2008, M.M. and E.M. requested an independent educational evaluation (“IEE”) of C.M. Several months later, in December 2008, the District filed a complaint (“2008 OAH Case”) requesting a due process hearing before the Office of Administrative Hearings (“OAH”) in order to determine the

1 validity of its April 2007 assessment, determine whether it was liable to reimburse C.M.s parents for
2 the IEE, and determine whether it had a right to conduct its own reassessment of C.M. After holding
3 a hearing, the ALJ issued a decision on July 1, 2009, finding that the parents were entitled to
4 reimbursement of half the expenses associated with the IEE and that the District had a right to proceed
5 with a new assessment; the ALJ did not rule on whether the initial assessment was valid. This decision
6 forms the basis of plaintiffs' complaint in *M.M., et al., v. Lafayette School District, et al.*, No. 09-4624
7 ("2008 OAH Appeal").

8 Meanwhile, on April 16, 2009, C.M. filed an administrative complaint requesting a separate due
9 process hearing to address (1) whether the District timely identified and evaluated C.M. for possible
10 disabilities, (2) whether the District's April 2007 assessment was appropriately conducted and identified
11 all of C.M.'s educational needs, and (3) whether the individualized education program ("IEP")
12 formulated as a result of the April 2007 assessment was developed and maintained in accordance with
13 IDEA mandates. On May 13, 2009, a different ALJ determined that the first two categories of claims
14 were time-barred and granted the District's motion to dismiss those claims. The ALJ's dismissal order
15 forms the basis of plaintiffs' complaint in *M.M., et al. v. Lafayette School District, et al.*, No. 09-3668
16 SI ("2009 OAH Interim Appeal").

17 Then, on August 28, 2009, C.M. filed another complaint with OAH, which was consolidated
18 with the pending 2009 OAH Case. On June 21, 2010, a third ALJ issued a decision in favor of the
19 District on all issues in the consolidated due process hearing. The ALJ ruled that (1) the District
20 provided C.M. with a free and appropriate public education ("FAPE") for the time period of April 2007
21 through June 2009, and (2) C.M. is not entitled to receive reimbursement or compensatory education.
22 *See* First Am. Compl., Ex. 1 at 48. This decision forms the basis of plaintiffs' complaint in the case at
23 bar, *M.M., et al. v. Lafayette School District, et al.*, No. 10-4223 ("2009 OAH Final Appeal").

24 On June 2, 2010, the Court granted the District's motion to dismiss the 2009 OAH Interim
25 Appeal without prejudice to refile once the ALJ has issued a final decision in the underlying
26 administrative proceedings. Case 09-3668 SI, Doc. 53. Plaintiffs have since appealed that order to the
27 Ninth Circuit Court of Appeals.

28 On December 6, 2010, the Court granted in part a motion to dismiss the 2008 OAH Appeal filed

1 by the District, the School Board, and several other defendants. The Court dismissed with prejudice two
2 claims that alleged violations of IDEA procedural safeguards in connection with specific actions taken
3 by the District, because the IDEA does not provide a private right of action to enforce these procedural
4 safeguards outside of an administrative hearing and appeal of an administrative determination. Case
5 09-4624 SI, Doc. 83, 4-6. The Court also dismissed with prejudice a procedural due process claim
6 brought under Section 1983, granted the District's motion to strike plaintiffs' request for expert fees,
7 and dismissed certain claims against another defendant not named in this case. *Id.* Shortly thereafter,
8 the Court consolidated the 2008 OAH Appeal and the 2009 OAH Final Appeal. Doc. 10.

9 On March 3, 2011, the Court granted in part defendants' motion to dismiss the 2009 OAH Final
10 Appeal, the case at bar. The Court dismissed with prejudice plaintiffs claims that alleged violations of
11 IDEA procedural safeguards, for the same reasons similar claims were dismissed in the 2008 OAH
12 Appeal - the IDEA does not provide a private right of action to enforce these procedural safeguards.
13 Case 09-4223 SI, Doc. 28 at 6. The Court dismissed with leave to amend plaintiffs' claim alleging
14 discrimination under Section 504 of the Rehabilitation Act.

15 C.M. thereafter filed a Second Amended Complaint ("SAC"), the operative complaint in the
16 2009 OAH Final Appeal, the case at bar. The SAC brings six claims for relief against all defendants.
17 The first is for reversal of the ALJ's May 2009 dismissal order in the 2009 OAH Case finding certain
18 claims time barred. The second is for reversal of the final June 2010 ALJ order in the 2009 OAH Case
19 finding the District did not deny CM a free appropriate public education. The third is for attorney's fees
20 and costs. The fourth claim is a retaliation claim brought under Section 504 fo the Rehabilitation Act,
21 and the fifth is a discrimination claim brought under Section 504.

22 Currently before the Court is plaintiff's September 9, 2011 motion to supplement the
23 administrative record with various documents, emails, and expert testimony. Defendant filed an
24 opposition on September 23, and the plaintiffs filed a reply on September 30. At the hearing held
25 October 28, 2011, the defendant stipulated to supplementing the record with two of plaintiff's requested
26 documents, as noted below.

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LEGAL STANDARD

Congress created the Individuals with Disabilities Education Act to meet the unique needs of disabled children by making available a free and appropriate public education. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181 (1982); *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1469 (9th Cir.1993). The IDEA contains numerous procedural safeguards to assure that schools meet these unique needs. *Ojai*, 4 F.3d at 1469. Parents may file a complaint with the school district regarding the services provided under their child's individual education plan (“IEP”), and may pursue an administrative hearing if the complaint is unresolved. *Id.* If unhappy with the result of the hearing, parents may appeal the results through a civil action in state or federal court. *Rowley*, 458 U.S. at 176.

When a party appeals the administrative hearing result, the provisions of the IDEA place the court in a unique position. The IDEA provides, in pertinent part, that “the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(ii). As a result, the court may give less than the usual deference to the administrative hearing officer's findings of fact. *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1126 (9th Cir.2003), *superseded by statute in non-relevant part*, *M.L. v. Fed. Way Sch. Dist.*, 394 F.3d 634 (9th Cir.2005). Complete de novo review, however, is inappropriate, because this would negate the administrative hearing process. *See id.* Due weight must be accorded to the administrative findings, and the court determines how much weight to give to these findings and to any additional evidence it deems appropriate to admit. *See Ojai*, 4 F.3d at 1473; *see also Rowley*, 458 U.S. at 206; *Vashon*, 337 F.3d at 1127.

The IDEA allows a party to request that the court hear “additional evidence.” 20 U.S.C. § 1415(i)(2)(C)(ii). The Ninth Circuit has construed “additional” evidence to mean “supplemental” information. *Ojai*, 4 F.3d at 1472. “Reasons for supplementation will vary; they might include gaps in the administrative transcript owing to mechanical failure, unavailability of a witness, an improper exclusion of evidence by the administrative agency, and evidence concerning relevant events occurring subsequent to the administrative hearing.” *Id.* at 1472-73 (citing *Rowley*, 458 U.S. at 206). The Ninth Circuit recently affirmed that “under our precedent, evidence that is non-cumulative, relevant, and

1 otherwise admissible constitutes ‘additional evidence’ that the district court shall consider pursuant to
2 20 U.S.C. § 1415(i)(2)(C)(ii).” *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1005 (9th Cir.
3 2011).

4 5 DISCUSSION

6 Plaintiffs seek to supplement the administrative record with ten pieces of evidence. They also
7 argue that the Court should consider the records from the two administrative hearings underlying this
8 case and the 2008 OAH Appeal (No. 09-4624) together, because the records form an “inextricably
9 related whole.” Pl.’s Mot. at 3. Plaintiffs’ claims will be discussed in turn.

10 11 **I. Psychologist Dr. Guterman’s April 15, 2011 Assessment Report of C.M.**

12 Plaintiffs seek to introduce an April 15, 2011 reading assessment of C.M. conducted by Dr. Tina
13 Guterman. Dr. Guterman was one of plaintiff’s expert witnesses at the hearing. Plaintiffs argue that
14 the report, along with testimony by Dr. Guterman to explain the meaning of the report, are relevant to
15 the dispute over whether C.M. made gains through the end of his 2008-2009 school year. Pl.’s Reply
16 at 5. Defendants argue that the evidence is not probative of C.M.’s needs during the time period at issue
17 in the hearing, and that granting evidence of C.M.’s current needs would greatly expand the scope of
18 this appeal “and convert it into a trial de novo.” Def.’s Opp. at 11 (*citing Ojai*, 4 F.3d at 1469).

19 A similar issue was recently faced by the Ninth Circuit in *E.M. v. Pajaro Valley*, 652 F.3d 999
20 (9th Cir. 2011). There, the district court had denied the plaintiff’s request to supplement the
21 administrative record with a psychologist’s report conducted after the administrative hearing, because
22 it was “not necessary to evaluate the ALJ’s determination.” *Id.* at 1005. The Ninth Circuit disagreed
23 with the court’s “necessity” analysis, instead reiterating that “the proper inquiry was whether the report
24 was relevant, non-cumulative, and otherwise admissible.” *Id.* The court found that § 1415(i)(2)(C)(ii)
25 allows for after-acquired information, as it could be useful “to provide significant insight into the
26 child’s condition, and the reasonableness of the school district’s action, at the earlier date.” *Id.* The
27 court thereupon remanded to the district court to consider whether the report was relevant as to whether
28 the school district met its obligations to the child under the IDEA. *Id.*

1 Here, Dr. Guterman’s report may be relevant to plaintiff’s claim that C.M. did not make the
2 gains contended by the District during the 2008-2009 school year. As the court stated in *Pajaro Valley*,
3 “the intent of 20 U.S.C. § 1415(i)(2)(C)(ii) is that the school district’s 2004 actions be reviewed with
4 the help available in 2007.” *Id.* Here, the after-acquired report from Dr. Guterman, and testimony
5 explaining the report, may be helpful to understanding the school district’s earlier actions. The Court
6 therefore GRANTS plaintiff’s request to supplement the record with Dr. Guterman’s April 15, 2011
7 report and testimony explaining the report.¹

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9 **II. Principal Mary Maddux’s Email Regarding C.M.’s Assessment Wall Card**

10 Plaintiffs seek to introduce an email from Principal Mary Maddux to Director of Student
11 Services Dana Sassone, sent April 17, 2009, regarding annual assessments of C.M. that were recorded
12 on the School’s “assessment wall.” Pl.’s Mot. at 8. Plaintiffs contend that they did not know at the time
13 of the hearing that the District “had withheld the information that is described in the body of the email.”
14 Pl.’s Mot. at 9. This is one piece of plaintiffs’ general claim that the District failed to provide material
15 information regarding C.M.’s educational needs that “would have given C.M.’s parents reason to
16 question whether interventions would be effective in the future.” Pl.’s Mot. at 8. Defendant argues that
17 the email is cumulative of the vast amounts of information already in the record about C.M.’s levels of
18 performance during the years in issue. Defendants further argue that M.M.’s declaration proves that
19 plaintiffs already have the information described in the email, except for unexplained “ELS Survey
20 documents” that are not relevant to the issues in this case. Def.’s Opp. at 6-7.

21 In his declaration, M.M. states that, “We have never been provided copies of the student cards
22 or ELS Survey documents that were described in the April 17, 2009 correspondence.” M.M. Decl., ¶
23 3. The Court finds that the email may be relevant to plaintiffs’ claims that the District improperly
24 withheld information from them regarding C.M.’s educational development. The Court therefore
25 GRANTS plaintiffs’ request to supplement the record with this email. Plaintiff also states offhandedly

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27 ¹ Granting this request, however, does not open the door to Plaintiffs to introduce a battery
28 of evaluations and other evidence regarding C.M.’s current status. Dr. Guterman’s report is deemed
admissible for the limited purpose of disputing the District’s contentions, if any, regarding specific gains
made by C.M. during the 2008-2009 school year.

1 in the same section of their brief that “Plaintiffs have not conducted depositions yet in this case but
2 should be entitled to do so and to supplement the record accordingly.” Pl.’s Mot. at 8. This statement
3 is vague and potentially overbroad, and to the extent it contains a request to conduct depositions
4 regarding this email, is DENIED.

5
6 **III. Email from Defendant’s Attorney Sarah Daniel to the California Department of Education**

7 At the October 28, 2011 hearing, defendant stipulated to supplementing the record with the
8 January 26, 2009 email from Sarah Daniel to Anita Salvo. The Court therefore GRANTS plaintiffs’
9 motion to supplement the record with the email.

10
11 **IV. December 9, 2008 Letter from E.M. to Director of Student Services Dana Sassone**

12 Plaintiffs seek to supplement the record with a December 9, 2008 letter sent from plaintiff E.M.
13 to Dana Sassone, and a December 12, 2008 email among District staff showing compliance with that
14 request. Pl.’s Mot. at 9. The letter requests a series of educational records related to C.M. As with the
15 assessment wall email requested *supra*, Section II, plaintiffs argue that this letter supports their
16 contention that defendants withheld material records they were entitled to receive. They further claim
17 that this record request was not relevant until they “learned after the hearing that the school district
18 withheld documents responsive to [the] request.” Pl.’s Mot. at 9. Defendants argue on the merits that
19 they provided the educational records requested by plaintiffs, and that any records not provided were
20 not “pupil records” of the type the District must provide under Cal. Educ. Code § 49061(b). Def.’s Opp.
21 at 4.

22 Defendant’s argument may well be meritorious. Nonetheless, the instant motion to supplement
23 the record is not the appropriate forum to argue the merits of plaintiffs’ underlying allegation that
24 defendant unlawfully failed to produce the records; that issue can be properly disputed at the summary
25 judgment stage. Here, plaintiffs seek only to introduce a letter sent by them to the school and the
26 school’s internal response, discussing other, related records. As the letter is relevant to plaintiffs’ claim,
27 as well as non-cumulative, the Court GRANTS plaintiff’s motion to supplement the record with the
28 December 9, 2008 letter and the District’s December 12, 2008 email.

1 **V. October 15, 2008 Letter from Dana Sassone to Plaintiffs**

2 Plaintiffs seek to introduce an October 15, 2008 letter sent from Dana Sassone to plaintiffs. The
3 letter discusses, *inter alia*, the March 2008 IEP meeting in which, as the letter states, “school staff
4 discussed with the family the assessment of [speech pathologist] Dr. Swain.” Pl.’s Opp., Ex. 5, Supp
5 0012. Plaintiffs argue the letter is relevant to dispute the ALJ’s finding that ‘since no assessments were
6 presented at this IEP meeting, the attendance of a school psychologist, speech language pathologist, or
7 occupational therapist was not needed to interpret any assessment results.” Pl.’s Mot. at 10. Plaintiffs
8 also argue the letter is relevant to dispute the ALJ’s finding that C.M.’s parents withheld a report written
9 by Dr. Loomos from the District, because it generally shows that “C.M.’s parents did not withhold
10 reports or information about private evaluations from [the District].” Pl.’s Reply at 10.

11 Defendant argues that the parents received the letter on or around October 15, 2008, and that
12 defendant included it as an exhibit in both administrative hearings below. At the end of the 11th day
13 of hearing in the second administrative hearing, neither party had used the exhibit with any witness, and
14 the District withdrew it. Plaintiff did not object at the time. “Not including the document [at] a hearing
15 twice, not introducing it into evidence, not objecting to its withdrawal, and not attaching it as an exhibit
16 here is not excusable neglect - it is just neglect and does not provide good cause to admit the document
17 now.” Def.’s Opp. at 9. Furthermore, defendant argues, the letter is not relevant to plaintiffs’ claims.

18 The Court agrees with defendant. The letter is not after-acquired information unavailable at the
19 hearing of the type discussed in *Ojai* and *Pajaro Valley*. 652 F.3d at 1005. Nor is it information that
20 was unknown to the parents prior to the hearing; indeed, it was an exhibit at the underlying hearing until
21 it was withdrawn without objection. Def.’s Opp. at 9. The current review of the administrative
22 decisions below is not to become a trial de novo. *Ojai*, 4 F.3d at 1469. Moreover, the letter does not
23 support the very claims for which plaintiff seeks to introduce it. The ALJ found that “no assessments
24 were presented at the IEP meeting,” and therefore experts were not needed to interpret assessment
25 results. Pl.’s Mot. at 10. The letter does not contradict that finding. As defendant points out, Dr.
26 Swain’s report was not issued until March 24, 2008, 6 days *after* the March 18, 2008 meeting. While
27 the assessment may have been “discussed” at the meeting, the District could not have been expected to
28 invite to the meeting a speech pathologist to interpret plaintiff’s lay interpretation of an unwritten report.

1 Def.'s Opp. at 10. Plaintiff also attempts to bolster the letter's relevance by claiming that it shows
2 plaintiffs did not *generally* withhold reports (since they discussed Dr. Swain's at the March meeting),
3 and thus the letter provides ammunition to attack the ALJ's finding that they withheld an entirely
4 different report written by Dr. Loomos. Pl.'s Mot. at 10. This argument is a stretch. The two reports
5 are unrelated. The plaintiffs' request to admit the October 15, 2008 letter is DENIED.

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7 **VI. September 18, 2008 Letter from Dana Sassone to Principal Mary Maddux**

8 Plaintiffs seek to introduce a letter from Dana Sassone to Principal Mary Maddux describing
9 various issues following an IEP meeting, and includes the statement that "7. Eligibility form says that
10 [Response to Intervention] documentation is attached but nothing is attached. [Please] attach." Pl.'s
11 Mot, Ex. 6, Sp 0013. Plaintiffs argue that this demonstrates that, contrary to the hearing officer's
12 findings, the school district was required to provide Response to Intervention documentation in
13 conjunction with C.M.'s initial IEP team meeting to determine his eligibility and unique needs. Pl.'s
14 Mot. at 10. Defendant argues that IDEA allows districts to determine eligibility for special education
15 using either a Response to Intervention model, or a Severe Discrepancy model, and that the hearing
16 officer correctly concluded the District used a severe discrepancy model. Def.'s Opp. at 5. Therefore,
17 defendant argues, the email is irrelevant as the RTI requirements do not apply here.

18 As discussed in Sections II and IV, *supra*, the Court will not engage the underlying merits of
19 plaintiffs' claims at this juncture. Defendant may be correct that it has sufficiently provided all required
20 documentation to plaintiffs, and that the severe discrepancy model was a correct or lawful approach.
21 However, the plaintiffs may make their argument that certain information was unlawfully withheld from
22 them, and this email is relevant to that argument. The plaintiff's request with respect to the September
23 18, 2008 letter is therefore GRANTED.

24
25 **VII. Notice of IDEA Procedural Safeguards**

26 At the October 28, 2011 hearing, defendant stipulated to supplementing the record with the
27 Notice of IDEA Procedural Safeguards. The Court therefore GRANTS plaintiffs' motion to supplement
28 the record with this document.

1 **VIII. Corrected Transcript of Expert Dr. Loomos' Transcript**

2 Plaintiffs seek to supplement the record by offering what they describe as a corrected transcript
3 of Dr. Loomos' testimony at the administrative hearing. Plaintiffs include declarations by both Dr.
4 Loomos and plaintiffs' attorney Lina Foltz that the corrected transcript accurately reflects the actual
5 testimony of Dr. Loomos at the hearing. See Decl. of Loomos at 1-2; Decl. of Foltz attached to Reply,
6 at 1. The Court accepts these declarations as evidence of the accurate testimony of Dr. Loomos.
7 Plaintiffs' request to supplement the record with the corrected transcript of Dr. Loomos' hearing
8 testimony is therefore GRANTED.

9
10 **IX. Expert Testimony That Was Excluded at the Hearing**

11 Plaintiffs seek to introduce witness testimony that was excluded at the hearing based upon
12 OAH's rule requiring disclosure of witnesses at least three days prior to the prehearing conference.
13 Plaintiffs argue that this rule is in conflict with the IDEA and state law requirements that bar testimony
14 not disclosed five days before the hearing (as opposed to the prehearing conference). Plaintiffs argue
15 that the IDEA preempts OAH's conflicting policies that require disclosure earlier than IDEA itself.

16 Plaintiffs rely on 20 U.S.C. § 1415(f)(2). That section states that "Not less than 5 business days
17 prior to a hearing . . . each party shall disclose to all other parties all evaluations completed by that date,
18 and recommendations based on the offering party's evaluations, that the party intends to use at the
19 hearing." Defendants correctly argue that this is a rule of exclusion to ensure procedural fairness. State
20 law that is consistent with the IDEA may supplement it. OAH's rule here provides greater protections
21 to both parties. See *Union School Dist. v. Smith*, 15 F.3d 1519, 1527 (9th Cir. 1994). The Court will
22 not implicitly overturn the OAH's rule here by admitting expert testimony excluded by the ALJ below.

23 Plaintiffs' motion to supplement the record with expert testimony that was excluded by the ALJ
24 below pursuant to OAH rules is DENIED.

25
26 **X. National Standards for Credentialing of School Psychologists**

27 One of plaintiffs' claims on the merits is that Michelle Charpentier, the District's psychologist
28 intern that conducted C.M.'s initial evaluation, was not qualified as a school psychologist. To support

1 this argument, they seek to introduce a 22-page document written by the National Association of School
2 Psychologists discussing the standards for credentialing of school psychologists, along with testimony
3 regarding the publication from a qualified expert. Pl.’s Opp. at 12. They argue “such testimony is
4 relevant to the qualifications of the student intern, is non-cumulative, and otherwise admissible.”
5 Defendants argue that the relevance of the evidence is highly speculative and cumulative “to the
6 extreme,” as there has already been extensive testimony and other evidence in the administrative
7 hearings about Ms. Charpentier’s training, experience, and qualifications. Def.’s Opp. at 11 (*citing*
8 TRI75:5-78:10, 86:20-87:23; TRII1559:14-1561:14, 1571:14-21).

9 The Court agrees with defendants. Testimony that is specific to Ms. Charpentier’s training is
10 already in the record. Testimony regarding national standards that are less specific are less relevant and,
11 and this stage, overly cumulative. The plaintiffs request to supplement the record with the NASP
12 publication is DENIED.

13
14 **XI. Plaintiffs’ Request that the Court Consider the Records from Both Administrative
15 Hearings Together**

16 Plaintiffs separately argue that the “two administrative decisions after hearings form an
17 inextricably related whole in the two consolidated cases before this Court.” Pl.’s Mot. at 2. Therefore,
18 the Court should consider the record from the first administrative hearing here “because it forms the
19 foundation for the hearing officer’s formulation of issues and the decisions that are challenged here.”
20 Pl.’s Mot. at 2. In other words, the plaintiffs want the Court to consider the underlying records of the
21 2008 OAH Appeal (No. 09-4624) along with the underlying record of the 2009 Final OAH Appeal here
22 (No. 09-4223). The Court will not issue a wholesale order either including or excluding the record of
23 the 2008 OAH Appeal. There may be evidence in that record which will be relevant, non-cumulative,
24 and admissible. Other evidence may be non-admissible for a variety of reasons. The Court does note
25 that it will not treat this federal action as a trial de novo, and thus will largely focus on the record before
26 the individual ALJ relevant to this appeal. *Ojai*, at 1472. However, plaintiffs may seek to introduce
27 evidence from the 2008 OAH Appeal record where it is relevant, non-cumulative, and admissible,
28 subject to objection from defendant.

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CONCLUSION

For the reasons above and for good cause shown, the Court hereby GRANTS plaintiffs' motion to supplement the record with:


- Dr. Guterman's April 15, 2011 Assessment Report of C.M.
- Mary Maddux's Email Regarding C.M.'s Assessment Wall Card
- Sarah Daniel's Email to the California Department of Education
- E.M.'s December 9, 2008 Letter to Dana Sassone
- Danna Sassone's September 18, 2008 Letter to Mary Maddux
- The Notice of IDEA Procedural Safeguards
- The Corrected Transcript of Expert Dr. Loomos' Transcript

The Court hereby DENIES plaintiffs' motion to supplement the record with:

- Dana Sassone's October 15, 2008 Letter to Plaintiffs
- Expert Testimony that was Excluded at the Hearing Pursuant to OAH Rules
- The National Standards for Credentialing of School Psychologist

IT IS SO ORDERED.

Dated: October 31, 2011



SUSAN ILLSTON
United States District Judge