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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

J.L.N., by and through his Guardian
Ad Litem Jose Nunez,

Plaintiff,

v.

GROSSMONT UNION HIGH
SCHOOL DISTRICT,

Defendant.

Case No.: 17cv2097-L-MDD

**ORDER DENYING MOTION TO
SUPPLEMENT THE
ADMINISTRATIVE RECORD**

[ECF NO. 35]

Before the Court is Plaintiff's motion to supplement the administrative record filed on July 8, 2018. (ECF No. 35). Defendant responded in opposition on July 27, 2018. (ECF No. 38). This case is an appeal of the decision of an Administrative Law Judge of the California Office of Administrative Hearings under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq. (ECF No. 1). The issues are whether Defendant, from February 23, 2015 to February 23, 2017, denied J.L.N. a free appropriate public education by: a. failing to develop appropriate present levels of performance; b. failing to offer appropriate goals; and c. failing to fully implement the specialized academic instruction

1 services called for in his individualized education program. (ECF No. 1).
2 Defendant prevailed on these issues in the administrative hearing and that
3 result is challenged in this Court.

4 **LEGAL STANDARD**

5 The Court shall consider supplemental evidence that is “non-
6 cumulative, relevant and otherwise admissible.” *E.M. v. Pajaro Valley*
7 *Unified Sch. Dist.*, 652 F.3d 999, 1005 (9th Cir. 2011).

8 **DISCUSSION**

9 Plaintiff intends to supplement the record with the Declaration of Dr.
10 Rienzi Haytasingh and reports of testing conducted by Dr. Haytasingh in
11 evaluating Plaintiff after the administrative hearing. Defendant challenges
12 the supplementation of the administrative record on the grounds that Dr.
13 Haytasingh’s opinion and testing results are cumulative. (ECF No. 38 at 11).

14 This is not a case where Defendant failed to offer or deliver special
15 education services to Plaintiff. Plaintiff needed special education services
16 and received special education services. The issues here, as presented above,
17 are whether the individualized plan for Plaintiff was adequate and properly
18 implemented. Defendant admits that there is “no dispute that [Plaintiff]
19 performed below average and national grade-level expectations on
20 standardized testing.” (ECF No. 38 at 12).

21 The Court has reviewed the administrative record and finds that it is
22 replete with test results reflecting Plaintiff’s below average performance on
23 standardized testing. The Court finds that the addition of Dr. Haytasingh’s
24 declaration and testing reports would be cumulative.

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1 CONCLUSION

2 Plaintiff's motion to supplement the administrative record is **DENIED**.

3 Dated: July 31, 2018

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5 Hon. Mitchell D. Dembin
6 United States Magistrate Judge
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