BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050108
v.	ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE, GRANTING CHANGE IN VENUE, AND ORDERING RESPONSE TO STUDENT'S COMPLAINT
SAN FRANCISCO UNIFIED SCHOOL DISTRICT.	

On May 26, 2017, a telephonic expedited prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Semuteh Freeman, Attorney at Law, appeared on behalf of Parent and Student with paralegal Olivia Vong. S. Diane Beall, Attorney at Law, appeared on behalf of San Francisco Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The expedited and non-expedited hearing shall take place at San Francisco's Pupil Services Building located at 727 Golden Gate Blvd., San Francisco, California, 94102, on June 6 through 8, 2017, and continue day to day, Monday through Thursday, at the discretion of the ALJ.[1] The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.[2]

As ordered in the scheduling order, San Francisco shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. During the PHC, San Francisco certified that the facilities used for this case comply with the law. **San Francisco shall file a written certification with OAH within two business days of the date of this order.**

[1] San Francisco cannot accommodate the hearing at its District Office location as identified in the scheduling order. Student did not oppose the change in location. San Francisco has offered to provide Student, Student's counsel, and the ALJ with parking passes.

[2] The hearing will end at 3:00 p.m. on June 8, 2017.

Prior to the beginning of the hearing, San Francisco shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. San Francisco shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. San Francisco shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Response to Student's Complaint. San Francisco has not provided Student with a response to his complaint. Pursuant to *M.C. v. Antelope Valley Union High School District* (9th Cir. 2017) 852 F.3d 840, Student's case should not proceed to a due process hearing until San Francisco either files a response to Student's complaint, or shows proof that it provided a written response to Student as required by 20 U.S.C. § 1415(c)(2)(B)(i)(I). **San Francisco was ordered to file with OAH, a response to Student's complaint, or proof of having provided a written response to Student, not later than close of business May 30, 2017.**

3. Expedited Issues and Proposed Resolutions. The expedited issues at the due process hearing and the proposed resolutions were discussed and clarified at the PHC and are listed below. Both parties agreed to the framing of the issues.

Expedited Issue 1: Did San Francisco deny Student and Parent their right to participate in the manifestation determination review team meeting on March 23, 2017, by holding the meeting without them, and by failing to reconvene the meeting at their request?

Expedited Issue 2: Did San Francisco violate Student's procedural rights under 20 U.S.C. § 1415(k) when it failed to allow him to return to George Washington High School following the March 23, 2017 manifestation determination review meeting because Student's staff obtained restraining orders against Student?[3]

Non-expedited Issue 3: From March 20, 2017, through the time of hearing, did San Francisco deny Student a free appropriate public education by failing to implement his

[3] San Francisco initially objected to the framing of this issue as an expedited claim. San Francisco proposed the additional language regarding restraining orders as specified in Student's complaint, and Student agreed. Both parties agreed to the additional language.

individualized education program, including his behavior intervention plan, on March 20, 2017?

Non-Expedited Issue 4: From April 21, 2017, through the time of hearing, did San Francisco deny Student a FAPE by unilaterally changing his placement to Thurgood Marshall High School?

Proposed Resolutions: Student seeks an order that San Francisco must: (1) reconvene a manifestation determination review meeting with Student and determine if his disciplinary conduct was a direct result of San Francisco's failure to implement his IEP; (2) allow Student to return to George Washington; and (3) provide staff training on implementation of IEP's and behavior intervention plans and on student mental health issues.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties shall ensure that there is only one document or short series of related documents per each exhibit tab. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. San Francisco is not required to make those employees available to testify at hearing who are subject to a collective bargaining agreement that specifies that the dates for hearing constitute non-service days. Anticipating this, Student has attempted to serve three District staff with a subpoena. Student was advised that he will need to comply with restraining orders that prevent him from being within 20 feet of specified District staff during the hearing.[4] San Francisco also hopes to elicit testimony from these same witnesses. San Francisco identified one additional witness, Darrin Atkins, a paralegal.

The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be

[4] Student's counsel understands Student may need to leave the hearing room during the testimony of some witnesses to comply with the restraining orders.

permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ. The parties are encouraged to present resumes for all witnesses testifying in their professional capacity.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. Counsel shall meet and confer regarding the order of witnesses by May 31, 2017. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates as well as on the issues presented.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. Student shall have witnesses available in case agreement on a witness list is not reached. **At the commencement of the due process hearing, the parties shall present a proposed joint written witness scheduled with time estimates to the ALJ.** The ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, the parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

6. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

7. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by telephone shall move in advance for leave to do so. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

San Francisco's request to have Rachel Noto testify telephonically in the event she is out-of-town was granted subject to the above requirements.

8. Electronic Recording of Hearing.

a. Audio Recording. Any request to audio record the hearing is subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the

recorder will be turned on and off at the same time as the ALJ's recorder, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing. Neither party requested to audio record the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

9. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party. Accordingly, Student shall present his case-in-chief, followed by San Francisco.

10. Motions. Ms. Freeman represented that another attorney from her office of the San Francisco Public Defender may appear with Student at hearing if she is otherwise unavailable. At San Francisco's request, Ms. Freeman agreed to notify opposing counsel of the name of any substitute counsel. No pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of May 26, 2017.

11. Compensatory Education and Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

12. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ at the time of hearing in written form signed by both counsel.

13. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

14. Special Needs and Accommodations. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

15. Hearing Closed To the Public. At the request of Student, the hearing will be closed to the public.

16. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE AT (916) 376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

17. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 30, 2017

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings