BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. THE NEW SCHOOL OF SAN FRANCISCO.	OAH Case No. 2017060552 ORDER RE: MOTION TO SUBMIT EVIDENCE

On June 12, 2017, Student filed a Due Process Hearing Request with the Office of Administrative Hearings naming The New School of San Francisco (Charter or School). Pursuant to the parties joint request for continuance, on June 21, 2017 OAH continued the hearing to October 17-19, 2017.

On October 13, 2017, a telephonic prehearing conference was held. The ALJ found that Student did not timely exchange any proposed documentary evidence. At that time, Parent elected to proceed on the currently scheduled hearing dates and to be limited to using only those exhibits timely exchanged by Charter, but Student was given leave to file a motion to continue the hearing.

On October 13, 2017, OAH granted Student's request for continuance of the hearing to November 7-9, 2017.

On October 16, 2017, OAH granted the parties joint request for continuance of the hearing to November 28-30, 2017.

On October 25, 2017, Student filed a motion to submit evidence at hearing, arguing that the reason Parent did not previously submit evidence was due to time constraints and lack of knowledge about the process. OAH received no written opposition from Charter.

On October 27, 2017, a prehearing conference was held. At the time of the prehearing conference, the ALJ was unable to determine if OAH had received Student's motion. Nonetheless, the parties argued the merits of the motion. Parent argued that since the hearing was continued to November 28, 2017, Parent wanted an opportunity to exchange additional evidence beyond what was contained in Charter's binder. Charter argued that Student's motion should be denied because on October 13, 2017, this issue was addressed, Parent elected to proceed on the then current dates, and be limited to Charter's exhibits. Charter argues it relied on Parent's statements in preparing for hearing, sent its exhibits to Parent, and if the motion is granted, Parent will have had more time than Charter to review

the opposing party's exhibits. Charter also contends Student's identification of exhibits in his prehearing conference statement was inadequate and that Parent had numerous notifications as to when evidence was due and failed to comply with those deadlines. Charter requested that Student be limited to the documentary evidence in Charter's binder served on Parent.

At the October 27, 2017 Prehearing Conference, the ALJ the ordered that Student was not limited at hearing to relying upon the documentary evidence in Charter's binder to prove Student's case. The ALJ determined that because the hearing had been continued to November 28, 2017, Student was entitled to the statutory period provided in Education Code section 56505, i.e., five business days prior to hearing, in which to exchange exhibits and witness lists. The ALJ also ordered that the parties meet and confer by no later than November 20, 2017, to discuss witnesses and documents.

A party to a due process hearing has the right to receive from the other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. (Ed. Code, § 56505, subd. (e)(7).) The parties also have the right, pursuant to Section 300.512(a)(3) of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing. (Ed. Code, § 56505, subd. (e)(7).)

Here, the relief Student seeks has already been addressed at the October 27, 2017 Prehearing Conference. Specifically, the ALJ ordered that the parties are required to serve their evidence binders on each other in compliance with Education Code section 56505 in accordance with the new hearing dates beginning on November 28, 2017. Charter's request to limit Student's evidence to the documents in Charter's binder was also denied.

Accordingly, Student's motion is denied because it is moot. To the extent that Charter has questions about the documents identified in Student's prehearing conference statement, the parties are ordered to meet and confer about those issues by no later than November 20, 2017. Any further issues about the documents should be addressed at hearing.

IT IS SO ORDERED.

DATE: October 30, 2017

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings