BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN MATEO-FOSTER CITY SCHOOL DISTRICT.	OAH Case No. 2015050320 ORDER FOLLOWING PREHEARING CONFERENCE; CONTINUING HEARING DATES; AND DISCHARGING AND VACATING ORDER TO SHOW CAUSE

On October 19, 2015, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Susan Foley, Attorney at Law, appeared on behalf of Parents and Student. Laurie Reynolds, Attorney at Law, appeared on behalf of San Mateo-Foster City School District. The PHC was recorded.

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

1. Order to Show Cause. On July 6, 2015, OAH issued an Order to Show Cause as to why this case should not be dismissed and Student's counsel ordered to pay expenses based on her failure to file a PHC statement and appear for the scheduled PHC on July 6, 2015. Student's counsel timely filed a written response on July 8, 2015, accounting for her failure to file a PHC statement and be available for the initial PHC. Based on this written response, the Order to Show Cause was vacated and discharged.

2. Hearing Dates, Times, and Location. The hearing was scheduled to begin on October 28, 2015. Ms. Reynolds is now handling this matter for another attorney in her firm who is who is now unavailable. Ms. Reynolds is unavailable for hearing on October 29, 2015, and requested that the second day of hearing be continued until November 3, 2015, or that the entire hearing be continued until November 3, 2015. Student did not oppose a continuance of the hearing.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal.

Rules of Court, rule 3.1332(c).) Good cause was found for a brief continuance to ensure consecutive hearing dates.

The hearing shall take place at San Mateo-Foster City's District office located at 1170 Chess Drive, Foster City, California, 94404, on November 3, 2015, at 9:30 a.m., November 4-5, 2015, at 9:00 a.m., and continuing day to day, Monday through Thursday, at the discretion of the ALJ.

The named local educational agency was to provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 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. The named local educational agency has not yet certified that it will provide a facility for this case that complies with the law, although its counsel represents that the facility is fully accessible. The local educational agency shall inform OAH by October 27, 2015, that it is able to certify that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, San Mateo-Foster City shall assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (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. District shall also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses and the ALJ.

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.

3. Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

Issues:

1. From April 30, 2013, through June 30, 2015[1], did San Mateo-Foster City deny Student a free appropriate public education by failing to offer an assessment plan when:

a. San Mateo-Foster City was on notice of Student's deficits and disabilities; and

[1] San Mateo-Foster City's objection to this issue extending beyond the spring of 2013 was overruled.

b. Parents raised concerns of Student's needs not being met within her educational setting?

2. Did San Mateo-Foster City deny Student a FAPE by failing to release all of her educational records in the form of e-mails pursuant to her request on June 24, 2015?

3. From April 30, 2013, through the time of hearing, did San Mateo-Foster City deny Student a FAPE by failing to find her eligible for special education as a student with a specific learning disability and other health impairment, and offer her an individualized education program?[2]

4. Did San Mateo-Foster City deny Student a FAPE when it failed to provide Parents with a copy of their rights and procedural safeguards when Parents provided San Mateo-Foster City a copy of Student's private assessment on May[3] 17, 2013?

Proposed Resolutions: Student seeks the following: (1) compensatory education; (2) reimbursement for all educational expenses including tuition and mileage from April 30, 2015, through the time of hearing; and (3) San Mateo-Foster City to assess Student, hold an IEP team meeting, find her eligible for special education, and offer an appropriate placement and services.

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 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. The parties shall schedule their witnesses to avoid delays in the hearing and to

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[2] San Mateo-Foster City's objection to this issue extending to the time of hearing was overruled.

[3] Student shall clarify at the start of the hearing whether Parents provided San Mateo-Foster City with a copy of Student's private assessment on April or May 17, 2013.

minimize or eliminate the need for calling witnesses out of order. Neither party shall be 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 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. Student identified the following nine witnesses: Parents, Linda Hughes, Lisa Maheras, Cassandra Hauseur, Griffith Montgomery, Shama Hinard, Katherine Peckham, and Linda Lau. San Mateo-Foster City identified seven witnesses, six of whom are shared, for a total of 10 witnesses. The parties are ordered to meet and confer by October 23, 2015, as to the schedule of witnesses and projected length of direct and cross examination.

At the start of the hearing, the parties shall present a proposed joint schedule of witnesses with time estimates. 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 and the issue presented.

6. Order of Presentation of Evidence and Scope of Witness Examination. 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 has the burden of proof as to her issues. Student shall present her evidence first, followed by San Mateo-Foster City. Where Student and San Mateo-Foster City intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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.

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, unless the opposing party has stipulated that the witness may appear by telephone. 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.

Student requested to have Ms. Hauseur testify telephonically as she is now residing in Los Angeles. Student's motion to have Ms. Hauseur testify telephonically was granted. Student shall provide Ms. Hauseur with a complete exhibit binder from each party, containing all of each party's exhibits prior to hearing, and San Mateo-Foster City shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

8. Electronic Recording of Hearing.

a. Audio Recording. Neither party requested permission to audio record the hearing. Both parties will be permitted to audio record the hearing, if they reconsider, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, 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.

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. Motions. 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 October 19, 2015.

10. 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.

11. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

12. 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.

13. 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: http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

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

15. 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.

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

IT IS SO ORDERED.

DATE: October 19, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings