BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014120778 ORDER FOLLOWING PREHEARING CONFERENCE AND DISMISSING ISSUE

On April 27, 2015, a telephonic prehearing conference was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Gail S. Hodes, Attorney at Law, appeared on behalf of Student. Damara Moore, Attorney at Law, appeared on behalf of the San Francisco Unified School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing in this matter shall take place at **135 Van Ness Avenue, Room #210, San Francisco, California 94102**. The hearing is scheduled on May 6-7 and May 12, 2015, and continuing day to day, Monday through Thursday, as needed, at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., except for May 6, when the hearing will begin at 9:30 a.m., unless otherwise ordered.

San Francisco shall provide a hearing room with separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the San Francisco's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. San Francisco shall ensure that all parties, witnesses and the ALJ have drinking water and tissue available to them. **San Francisco shall ensure that the facility for the hearing 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.**

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. Order Dismissing Issue: During the prehearing conference, Student, through her attorney, withdrew Issue Two in her prehearing conference statement , which alleges that San Francisco denied Student a free appropriate public education (FAPE) because it failed to provide Student comprehensive assessments in all areas of suspected disability from September 2014 to April 2015. Accordingly, Issue Two is dismissed, and the due process hearing in this matter shall proceed only as to the remaining issues identified below.

3. Issues and Proposed Resolutions. The issues have been clarified and reframed for clarity, as set forth herein below:

a) Did San Francisco fail in its child find obligation, thus denying Student a free appropriate public education, by failing to refer Student for special education assessment between September 2014 and February 2015?

b) From September 2014 to April 9, 2015, did San Francisco deny Student a FAPE by failing to make him eligible for special education and related services?

c) From September 2014 to April 9, 2015, did San Francisco deny Student a FAPE by failing to offer Student a special educational program designed to meet his unique and individual needs?

d) Did San Francisco deny Student a FAPE by violating Parent's procedural rights by failing to provide a full and complete copy of Student's educational records to Parents after parents requested the records on December 2, 2014?

PROPOSED RESOLUTIONS: As proposed resolutions, Student seeks an order finding him to be the prevailing party, and directing San Francisco to: 1) provide him with compensatory education in all areas of needs including one-to-one academic instruction and/or educational therapy, behavior support, social skills, occupational therapy and counselling services; and 2) reimbursement for educational costs, transportation and related 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 in a way that makes clear the party offering it (such as "S1" or "D2"). Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party in compliance with Education Code section 56505, subdivision (e)(7). Except for good cause shown, or unless used solely for rebuttal or impeachment, a party may be not be able to present an exhibit that has not been disclosed, or exchanged with the opposing party, as required by law.

At 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.

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 to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. A party may not be allowed to call witnesses not properly disclosed as required by law, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer regarding the schedule of witnesses, and prepare a proposed joint or individual witness schedule(s). The proposed witness schedule(s) shall identify the witnesses each party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their testimony.

6. Scope of Witness Examination. 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, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

7. Telephonic Testimony. A party seeking to present a witness by telephone shall move in advance for leave to do so; 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. Neither party requested telephonic testimony.

8. Electronic Recording of Hearing.

a. Audio Recording. The following conditions apply to any recording: 1) OAH's recording is the only official recording; 2) the recorder will be turned on and off at the same time as the ALJ's recorder, to avoid recording conversations while off the record; and 3) the 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. Timely Disclosure of Witnesses/Exhibits. The parties are to comply with Education Code section 56505, subdivision (e)(7), that provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

10. Order of Presentation of Evidence. Student shall present his case first followed by San Francisco. If a witness it to be called by both parties, counsel shall be prepared to ask their questions of the witness – direct and cross so as to prevent the need for the witness to be recalled.

11. Motions. No pretrial motions are pending. 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.

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

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. Compensatory Education/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.

15. 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 clerk at (916) 263-0880**,** or the OAH ADA Coordinator **at 916-263-0880 or OAHADA@dgs.ca.gov** as soon as the need is made 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 has requested any special accommodation for any witness or party, or for interpreter services.

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

17. 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.

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

IT IS SO ORDERED.

DATE: April 29, 2015

/S/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings