BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015010181
v.	ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING REQUEST FOR CONTINUANCE AND SETTING NEW HEARING DATES
SAN MATEO UNION HIGH SCHOOL DISTRICT.	

On May 18, 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. Timothy Fox, Attorney at Law, appeared on behalf of San Mateo Union High School District. The PHC was recorded.

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

1. San Mateo's Motion to Continue Hearing. This matter was set to begin hearing on June 2, 2015. At the start of the PHC, San Mateo asked to continue the hearing until June 9, 2015, because its Special Education Coordinator, is unavailable for the current hearing schedule due to a medical procedure. Student did not oppose a short continuance. This is the second request for continuance.

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).)

OAH reviewed the request for good cause and considered all relevant facts and circumstances. San Mateo established good cause for a continuance in this matter. The hearing was continued to June 9-11, 2015.

2. Hearing Dates, Times, and Location. The hearing shall take place at 650 N. Delaware Street, San Mateo, California, 94401, on June 9, 2015, at 9:30 a.m., and June 10-

11, 2015, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.[1] Elk Grove shall 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.[2]

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 in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC and are listed below.[3]

Issue One: During the 2014-2015 school year, beginning August 11, 2014, did San Mateo deny Student a free appropriate public education by failing to offer an individualized education program placement that would meet his needs for a low student-to-teacher ratio, a small campus, on-site therapeutic mental health staff, and a residential setting in the following IEP's:

a. July 1, 2014;

b. September 4, 2014; and

c. October 2, 2014?

[1] The parties represent that this matter can be completed in three full hearing days. If an additional hearing date is needed, the parties shall be prepared to discuss the possibility of adding Friday, June 12, 2015, as an additional hearing day due to the unavailability of Parents the week of June 15, 2015.

[2] At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. San Mateo shall ensure that all parties, witnesses, and the ALJ have drinking water available to them.

[3] The parties may address the framing of the issues at the start of the hearing.

Issue Two[4]: From January 16, 2015, though the end of the 2014-2015 school year, did San Mateo deny Student a FAPE by:

a. failing to make a clear and concise offer with regard to a start date;

b. failing to make a clear and concise offer of related services with regard to the frequency and duration of speech and language therapy services;

c. failing to make a clear and concise offer with regard to mental health services;

d. failing to offer an actual classroom;

e. failing to offer a credentialed teacher;

f. offering a shortened school day; and

g. failing to offer an IEP placement that would meet his needs for a low student-to-teacher ratio, a small campus, on-site therapeutic mental health staff, and a residential setting

Proposed Resolutions: Student requests an order that San Mateo denied him a FAPE from August 11, 2014, through the time of hearing. Student seeks reimbursement for all educational expenses incurred since that date, including the costs of attending Monarch School and related transportation costs including hotel and meals. Student also seeks prospective placement at Monarch School.

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. There shall be no more than one document or a short series of related documents per exhibit. Each exhibit binder shall contain a detailed table of contents. The parties must comply with Education Code section 56505, subdivision (e)(7), and exchange their evidence binders at least five business days prior to hearing. 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 included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

[4] In their closing arguments, the parties may argue whether each sub-issues of *Issue Two* should be analyzed as a procedural violation, a substantive violation, or both.

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.[5] 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 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 specifically identified 17 witnesses. San Mateo identified 11, some of whom are shared witnesses. The parties are ordered to meet and confer by June 4, 2015, as to the schedule of witnesses and projected length of direct and cross examination, to ensure effective use of hearing time and the timely completion of the hearing.

At the start of the hearing, the parties shall present a final, 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. Student bears the burden of proof and shall present his evidence first, followed by San Mateo. Where Student and San Mateo 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. 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's motion to allow out-of-state witnesses from Monarch School to testify telephonically was unopposed and is granted. Student shall provide each telephonic witness with a complete exhibit binder from each party, containing all of each party's exhibits, prior

[5] San Mateo will produce witnesses under its employ, including Paul Belzer. Student will need to subpoena staff from Design Tech Charter High School as these witnesses are not employed by San Mateo.

to the hearing. San Mateo shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

8. Electronic Recording of Hearing. At present, neither party intends to make an audio recording of the hearing. Both parties are authorized to audio record the proceedings 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 recording, 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. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing.

9. Motions. Neither party intends to file any pretrial motions. 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 18, 2015.

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

11. 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.

12. 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.

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 clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as soon as the need is made known. Additional information concerning a request 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 Student's request, 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: May 18, 2015

/S/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings