BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN MATEO FOSTER CITY SCHOOL DISTRICT.	OAH Case No. 2016090418 ORDER ON ADMISSIBILITY OF STUDENT'S EXHIBITS 90, 98, 99, 125, 127, AND 129 AND DENYING MOTION FOR RECONSIDRATION

The parties in this matter participated in a due process hearing before the Office of Administrative Hearings on March 1, March 2, March 7, March 8, March 9, and March 14, 2017. During the hearing, Student moved to admit Student's Exhibits 90, 98, 99, 125, 127, and 129. San Mateo Foster City School District opposed the admission of the exhibits into evidence at hearing. A description of the exhibits is as follows:

a. Student Exhibit 90 – Certification of Administrative Record for OAH case number 2014100402, dated February 18, 2015;

b. Student Exhibit 98 – Testimony of Jessica Colangelo, elicited during the due process hearing in OAH case number 2014100402;

c. Student Exhibit 99 – Testimony of Carly Earnshaw, elicited during the due process hearing in OAH case number 2014100402;

d. Student Exhibit 125 – Various Special Incident Reports, dated between January 2013, and July 2014;

e. Student Exhibit 127 – Various Special Incident Reports, dated between September 2013, and July 2014; and

f. Student Exhibit 129 – Various Special Incident Reports, dated between September 2013, and January 2014.

The parties were ordered to brief the evidentiary issues by March 17, 2017. The parties submitted timely briefing on whether the above exhibits should be admitted into evidence.

DISCUSSION

Student's Exhibits 90, 98, and 99

Student seeks to admit Student's Exhibits 98 and 99 as former testimony to support allegations made in his complaint. Student seeks to admit Student's Exhibit 90 to show Student's Exhibits 98 and 99 are part of the administrative record in OAH case number 2014100402. The former testimony at issue was elicited during a due process hearing involving the same parties, but relating to an issue different than the issues raised in the current matter. Neither of the witnesses who provided the former testimony was called to testify at hearing in the instant matter, nor did Student provide any indication the witnesses were unavailable to testify at hearing in this matter.

Student failed to provide a sufficient basis for admitting the prior testimony contained in Student's Exhibits 98 and 99. Student has failed to show the testimony contained in Exhibits 98 and 99 are relevant to the issues raised in this matter and failed to list either witness on his witness list or call either person to testify in this hearing. Accordingly, Student's request for admission of Exhibits 98 and 99 is denied. Student's request for admission of Exhibit 90 is denied also, as that exhibit was offered to show Exhibits 98 and 99 were part of the administrative record certified by OAH; and, therefore, is not relevant to the issues to be decided in this matter.

Student's Exhibits 125, 127, and 129

Student seeks to admit various Special Incident Reports, marked Student's Exhibits 125, 127, and 129, as business and/or official records kept by staff at Edgewood, a nonpublic school, in the regular course of business to prove allegations made in his complaint that Student's records incorrectly stated she exhibited sexualized behavior. Specifically, Student argued the Special Incident Reports failed to cite any sexualized behavior by Student at school, even though other reports from the nonpublic school to the individualized education program team stated Student exhibited sexualized behavior at school.

Other than pages 2871 through 2935 of Student's Exhibit 127, Student did not properly lay a foundation for the admittance of these documents. Further, Student failed to establish the report made to the IEP team, which stated Student had sexualized behaviors, was based solely or even in part on information in the Special Incident Reports. Therefore, Student's request for admission of Student's Exhibits 125, the pages not already admitted in Student's Exhibit 127, and Student's Exhibit 129 is denied.

Motion for Reconsideration

In San Mateo-Foster City's briefing on the evidentiary issues, the District moves for reconsideration of the admission of Student's Exhibit 86 into evidence based on authentication and relevancy grounds. Student's Exhibit 86 contains various records from Esther B. Clark School.

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

In its motion, San Mateo-Foster City did not make a showing of new or different facts, circumstances, or law justifying reconsideration of the admission of Student's Exhibit 86 into evidence. As a result, Student's motion for reconsideration is denied.[1]

IT IS SO ORDERED.

DATE: March 21, 2017

DocuSigned by:

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings

[1] No finding is made as to the timeliness of the District's motion for reconsideration.