

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT,

OAH Case No. 2015040885

SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015030258

ORDER FOLLOWING PREHEARING  
CONFERENCE AND DENYING  
REQUEST TO CONTINUE  
PREHEARING CONFERENCE

On August 7, 2015, a telephonic prehearing conference was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Father appeared on Student's behalf. Attorney Melanie Seymour appeared on San Mateo-Foster City's behalf. The PHC was recorded.

Motion to Continue PHC only:

At the outset of the hearing Father requested the PHC be continued because he was on vacation and did not have prior notice of the PHC. He specifically requested that the hearing dates remain as calendared. Ms. Seymour objected to the request because she is leaving the country tomorrow on a preplanned vacation and is not scheduled to return until the day before the hearing in this matter.

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

Good cause was not established to continue the PHC in this matter. The undersigned ALJ reviewed the scheduling order setting forth the date for the PHC. Although the time was ultimately moved from 10:00 a.m. (as noted in the order) to 3:00 p.m. the PHC had been scheduled since June 29, 2015. The proof of service indicated the scheduling order was mailed to Parents. That representation refreshed Father's recollection that he had received the order but inadvertently did not note the date scheduled for the PHC.

The motion to continue the PHC only was denied; however, this ALJ informed Father she was willing to hear a request to continue the entire matter if he so chose. Father elected to proceed with the PHC as scheduled and did not make a motion to continue the case.

Based upon discussion with the parties the following orders are issued:

1. Hearing Dates, Times, and Location. The hearing shall take place at **San Mateo-Foster City's offices located at 1170 Chess Drive, Foster City, CA 94404.** It is scheduled for August 24, 2015, from 1:30 p.m. to 5:00 p.m. and on August 25-26, 2015, from 9:00 a.m. to 5:00 p.m. The hearing will continue day-to-day Monday through Thursday as needed and at the discretion of the ALJ.

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. San Mateo-Foster City will make district witnesses available without the need for subpoena upon receiving notice from Father of any district witnesses he intends to call. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability.

2. Issue and Proposed Resolutions. The issue below was discussed at the PHC and reworded for clarity.

STUDENT's ISSUE: Did San Mateo Foster City deny Student a free appropriate public education during the 2014-2015 school year from November 1, 2014, through the extended school year by failing to:

- a) consider parental input regarding proposed amendments to IEP's in the areas of behavior support and social skills;
- b) permit Parents access to Student's records and evaluation notes;
- c) grant Parents' request to observe and record Student during class sessions;
- d) reschedule IEP team meetings upon Parental request;
- e) consider external evaluations;

- f) incorporate external evaluations in Student's IEP;
- g) have San Mateo Foster City members of Student's IEP team contact independent evaluations;
- h) notify Parents prior to an IEP team meeting that a change in Student's placement would be recommended;
- I) offer a program designed to meet Student's unique behavioral needs by not offering individual ABA services;
- j) offer a program designed to meet Student's unique speech and language needs by not offering individual speech and language services; and
- k) offer extended school year services for the 2015 ESY?

PROPOSED RESOLUTION: Individual ABA therapy sessions; individual speech and language therapy sessions; and extended school year services.

SAN MATEO-FOSTER CITY's ISSUE: Is San Mateo-Foster City's January 8, 2015, behavioral assessment of Student legally complaint?

PROPOSED RESOLUTION: San Mateo-Foster City seeks a determination that its January 8, 2015, behavior assessment met all legal requirements such that Student is not entitled to an independent educational evaluation at public expense.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). All pages of a party's exhibit binder shall be consecutively numbered. The exhibits should consist of one document or short series of documents that are related (for example, an individualized education program shall have its own exhibit rather than a single exhibit for all IEP's). Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall supply an exhibit binder containing its exhibits for the ALJ, and a second exhibit binder for the 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.

Each party shall comply with Education Code section 56505, subdivision (e)(7) and timely serve an exhibit binder containing its respective exhibits on the other party.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under their control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order.

b) The parties are ordered to meet and confer to develop a proposed joint witness schedule. The proposed schedule will be presented to the ALJ at the beginning of the hearing. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party will be permitted to question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases-in-chief (conducting both direct and cross) so that each witness only appears once. Student will present his case first followed by San Mateo-Foster City.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, 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. At this point there is no pending request for telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, San Mateo-Foster City requested to record the hearing. The request was granted 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; 3) that the operation of the party's recording mechanism will not be allowed to delay the hearing; and 4) that the recording will not be shared with any individuals outside of the hearing room during 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.

8. Motions. No motions are pending or anticipated prior to hearing. Any motion filed after the prehearing conference must be accompanied by a showing of good cause as to why the motion was not made prior to the prehearing conference.

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

10. Compensatory Education and Reimbursement. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Conduct 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. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party. 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, the OAH ADA Coordinator at [OAHADA@dgs.ca.gov](mailto: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>.

13. Hearing Open To the Public. At Student's request the hearing will be open to the public.

14. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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.

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

IT IS SO ORDERED.

DATE: August 10, 2015

/s/

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JOY REDMON  
Administrative Law Judge  
Office of Administrative Hearings