BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020868

ORDER DENYING MOTIONS IN LIMINE

MAY 02, 2023

On April 26, 2023, San Francisco Unified School District filed motion containing two motions in limine with the Office of Administrative Hearings, called OAH. The first motion in limine sought a prehearing conference order to limit San Francisco Unified's period of potential liability to the two-year period prior to filing the complaint. The second motion in limine sought to exclude at hearing any evidence of confidential mediation communications and any other settlement communications. OAH received no written opposition to either motion in limine.

On May 1, 2023, OAH held a Prehearing Conference. At the PHC, the parties discussed and argued the motions in limine as reflected on the record. Student's counsel stated that Student intended on filing written opposition to the first motion in limine but did not oppose the second motion in limine.

APPLICABLE LAW

A motion in limine is made to exclude evidence before it is offered at trial on grounds that would be sufficient to object to or move to strike the evidence. A motion in limine is used to preclude prejudicial or objectionable evidence before it is presented to the jury. (3 Witkin, Cal. Evid. (5th Ed. 2022) Presentation § 379; *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal. App. 4th 15, 26.)

Evidence should be excluded on a motion in limine only when the evidence is clearly inadmissible on all potential grounds. (See e.g., *Hawthorne Partners v. AT & T Tech., Inc.* (N.D.Ill.1993).831 F.Supp. 1398, 1400.) "Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context." (*Ibid.*) Courts considering a motion *in limine* may reserve judgment until trial, so that the motion is placed in the appropriate factual context. (See *Gleason v. Franklin* (C.D. Cal. October 17, 2022, No. CV 15-8380-CBM-(DFMx), 2022 WL 18399953 at *2, quoting *U.S.A. v. Jackson* (C.D. Cal. July 25, 2016, No. 2:13-CR-00674-CAS) 2016 WL 4059615 at *2 (". . . motions in limine should rarely seek to exclude broad categories of evidence, as the court is almost always better situated to rule on evidentiary issues in their factual context during trial").

Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it. (Evid. Code, § 1152, subd. (a).)

No evidence of anything said or any admission made in the course of a mediation is admissible, and disclosure of the evidence shall not be compelled in any administrative adjudication. (Evid. Code, § 1119, subds. (a).) All communications, negotiations, or settlement discussions in the course of mediation are confidential. (Evid. Code, § 1119, subd. (c).) However, evidence otherwise admissible shall not be or become inadmissible solely by reason of its introduction or use in a mediation. (Evid. Code, § 1120, subd. (a).)

FIRST MOTION IN LIMINE RE: LIMITING PERIOD OF LIABILITY

San Francisco Unified's first motion in limine does not seek to exclude evidence. Rather, it seeks to limit its liability to the two-year period prior to the filing of the complaint. As such, San Francisco Unified's motion is a motion for summary adjudication of issues, not a motion in limine. OAH has no summary adjudication of issues procedure in special education matters. Further, the ALJ and the parties clarified the issues for hearing at the PHC on May 1, 2023. All the issues are framed as occurring within the two-year period prior to the filing of the complaint. (See Order Following Prehearing Conference Dated May 1, 2023.) San Francisco Unified's first motion in limine is denied.

SECOND MOTION IN LIMINE RE: SETTLEMENT COMMUNICATIONS

Here, San Francisco Unified's motion is not directed to any particular item or items of evidence. The motion is vague and devoid of any specificity in the evidence San Francisco Unified seeks to have OAH exclude. At the PHC, San Francisco Unified's counsel could not cite to any specific statements, documents, or other evidence it wanted OAH to exclude. Notably, Student's counsel stated Student did not intend to present settlement communications as evidence at hearing.

Having failed to cite to any specific evidence, it is impossible to evaluate whether the evidence San Francisco Unified seeks to bar are in fact settlement communications within the scope of Evidence Code section 1152 or mediation discussions with the scope of Evidence Code section 1119, much less determine that the potential evidence is clearly inadmissible on all grounds. Settlement communications may be admissible if they are proffered for a purpose other than to prove liability or damage. (See e.g, Evid. Code § 1151, subd. (a).) Likewise, evidence is not necessarily inadmissible just because it was used at mediation. (See, e.g., Evid. Code, §1120, subd. (a).)

San Francisco Unified's second motion in limine is denied without prejudice. San Francisco Unified may renew its objection at the time of hearing when the evidence, if any, is proffered.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings