BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SAN MATEO-FOSTER CITY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016080688 ORDER FOLLOWING PREHEARING CONFERENCE

On November 28, 2016, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Lenore Silverman, Attorney at Law, appeared on behalf of San Mateo-Foster City School District. Father appeared on behalf of himself and Student. The ALJ called Mother using the telephone number in the file, and, when Mother did not answer the phone, the ALJ left a voicemail message to the effect that Mother was welcome to join the PHC, but the PHC would proceed without her. Mother never joined the call, and the PHC proceeded. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following Order:

1. Hearing Dates, Times, and Location. The hearing shall take place on December 6 and 7, 2016, and shall continue day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 1170 Chess Drive, Foster City, California 94404. Unless otherwise ordered, the hearing shall begin at 9:30 a.m. on December 6, 2016, and at 9:00 a.m. on all other days.

As ordered in the scheduling order, the named local educational agency was to 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. As of the date of this PHC Order, the named local educational agency failed to certify that the facilities used for this case comply with the law. The local educational agency shall inform OAH within two business days of the date of this Order if it is able to certify that it will provide a facility that complies with the law.

Prior to the beginning of the hearing, District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for District's representatives; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District shall make reasonable efforts to

provide drinking water and tissue to all parties, witnesses and the ALJ. To the extent practicable, the same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night.

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 was not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

Were District's psychoeducational and speech and language assessments conducted during spring 2016, and their reports, appropriate such that Student is not entitled to independent assessments in these areas at public expense?[1]

District's proposed resolution is an order that the subject assessments and reports were appropriate and that Student is not entitled to independent assessments in these areas at public expense.

3. 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 whether 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 consecutively numbered, by means of Bates stamp or other method, starting with the first page of the first exhibit and ending with the last page of the last exhibit. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other by no later than November 29, 2016, in compliance with Education Code section 56505, subdivision (e)(7). 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.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at

[1] District's Request for Due Process Hearing also alleged that District's occupational therapy assessment conducted in spring 2016, and the report of that assessment, were appropriate. At the PHC, Father stated that he was not requesting an independent assessment in the area of occupational therapy. Therefore, District withdrew the issue pertaining to the appropriateness of its occupational therapy assessment and report.

the request of that party, except for good cause shown, and unless the ALJ rules that it is otherwise admissible.

4. Witnesses. The parties shall exchange their final witness lists by no later than November 29, 2016, in accordance with Education Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available, upon timely notice. 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 disclosed in the party's final witness list, 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

Except for parties, and individuals who are serving as representatives of parties for purposes of appearance at hearing, no witness will be allowed in the hearing room during the proceedings except when that witness has been called to testify.

The parties shall confer in an attempt to reach agreement on a witness schedule for the first day of hearing. District shall have witnesses available in case agreement on a witness list is not reached. At all times throughout the hearing, the parties shall be prepared to discuss the witness schedule and the time the testimony of each witness is expected to take.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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, at the discretion of the ALJ. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

6. 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. The witness shall testify from a landline telephone, while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Electronic Recording of Hearing.

a. Audio Recording. No party has requested or received permission to audio record 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. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, District is the petitioning party. Accordingly, District shall present its case-in-chief first.

9. Motions. No pretrial motions are pending or contemplated. 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 PHC of November 28, 2016.

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

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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing unless the ALJ grants permission. There shall be no weapons in the hearing room unless they are carried by authorized law enforcement personnel.

12. Special Needs and Accommodations. No party has requested any accommodations or language interpreting services.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at: http://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

13. Hearing Open to the Public. At the request of Student, the hearing will be open to the public.

14. 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, AS APPLICABLE. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO 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.

15. Failure to comply with this Order and with Education Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: November 30, 2016

DocuSigned by:
Elsa H. Jones
A2AB91AD127342B...

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings