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 2024030105

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, DENYING MOTION TO DISMISS, PARTIALLY GRANTING MOTION TO BIFURCATE, AND DENYING MOTIONS IN LIMINE

MAY 13, 2024

On May 13, 2024, Administrative Law Judge Linda Dowd, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Carly Christopher appeared on behalf of Student. Attorney Patrick Swillinger appeared on behalf of San Francisco Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing will take place on May 21, 22, and 23, 2024, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The parties anticipate it will take six to nine days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing. However, Friday May 24, 2024, will not be a hearing day.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using a computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

ISSUES AND PROPOSED RESOLUTIONS

SAN FRANCISCO UNIFIED'S MOTION TO DISMISS AND BIFURCATE

On May 8, 2024, San Francisco Unified filed a motion to dismiss claims and requested a bifurcated hearing. San Francisco Unified alleges Student's complaint raises claims outside the two-year statute of limitations. San Francisco argues Student's claims are limited to those arising or occurring on or after March 4, 2022. Further, San Francisco Unified requests that OAH conduct a bifurcated hearing on the issue of whether Student can meet his burden of proving by a preponderance of the evidence that either of the two statute of limitations exceptions exist to allow him to extend the time at issue for hearing. San Francisco Unified further requests OAH issue an order following a bifurcated hearing dismissing all claims arising before March 4, 2022.

Student opposed San Francisco Unified's motion. Student argues he is entitled to an evidentiary hearing to determine if the two-year statute of limitations may be extended.

The Individuals with Disabilities Education Act, called IDEA, allows states to establish their own statute of limitations for special education cases. (20 U.S.C. § 1415(b)(6)(B) & (f)(3)(C).) The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (*l*), establish exceptions to the statute of limitations. The two-year limitations period does not apply in cases in which the parent was prevented from filing a request for due process hearing due to either:

- specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

- the withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law.

(Ed. Code, § 56505, subd. (*l*); see also 20 U.S.C. § 1415(f)(3)(C), (D).)

For purposes of the statute of limitations, California's discovery rule is consistent with the IDEA. In California, a claim accrues when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (*l*).) A parent's knowledge that a student's education is inadequate is sufficient for the statute of limitations to begin to accrue. (*M.M. & E.M. v. Lafayette Sch. Dist.* (N.D.Cal., Feb. 7, 2012, Nos. V 09-4624, 10-04223 SI) 2012 WL 398773, at pp. 17-19 (*M.M.*), affd. in part and revd. in part (9th Cir. 2014) 767 F.3d 842, 858-859.) The statute of limitations begins to run when a party is aware of the underlying facts that would support a legal claim, not when a party learns that the act was wrong. (*M.M.*, *supra*, at p. 18; *Avila v. Spokane Sch. Dist.* (9th Cir. 2017) 852 F.3d 936, 937, 945 (the IDEA's statute of limitations barred claims that were filed more than two years after the time parents "knew or should have known" about the actions forming the basis of their complaint).)

Student alleges an exception to the two-year statute of limitations exists because San Francisco Unified made specific misrepresentations to Parents and withheld information it was required to provide. Although Student's complaint does not explain how he was prevented from filing the complaint within the two-year statute of limitations, he does allege San Francisco Unified misrepresented and withheld information. Therefore, Student is entitled to an evidentiary hearing to determine if the two-year statute of limitations may be extended. San Franscico Unified's motion to dismiss is denied.

San Franscico Unified's request for a bifurcated hearing is partially granted. Although OAH will not hold two separate hearings, the first portion of the hearing will be to determine if Student can present evidence of claims occurring prior to March 4, 2022. Student anticipates needing four to six witnesses and one and a half to two days to present his evidence. After Student presents his evidence, the ALJ will take a recess and make an oral ruling if Student may proceed with any issues prior to March 4, 2022.

The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the PHC are listed below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

ISSUES

1. During the 2019-2020 school year, did San Francisco Unified fail to conduct assessments for Student, specifically a:
    a. functional behavioral assessment,
    b. speech and language,
    c. physical therapy, and
    d. educationally related mental health?
2. During the 2019-2020 school year, did San Francisco Unified deny Student a FAPE by:
    a. failing to provide Student with in-person instruction to meet his unique needs,
    b. unilaterally changing his services without holding an IEP team meeting, and
    c. failing to draft an appropriate positive behavior intervention plan?

3. During the 2020-2021 school year, did San Francisco Unified deny Student a FAPE by:
    a. failing to provide Student with in-person instruction to meet his unique needs,
    b. unilaterally changing his services without holding an IEP team meeting,
    c. failing to conduct an educationally related mental health assessment,
    d. failing to draft an appropriate positive behavior intervention plan, and
    e. failing to implement Student's operative IEP?
4. During the 2020-2021 school year, did San Francisco Unified significantly impede Parents' ability to meaningfully participate in the IEP decision-making process by:
    a. failing to provide Parents with consistent IEP progress reports,
    b. misrepresenting Student's present levels of performance,
    c. misrepresenting San Francisco Unified's obligation to assess and provide a FAPE to student during distance learning,
    d. failing to consider the concerns and recommendations from Parents' and independent professionals,
    e. failing to provide Parents with legally complaint prior written notices when they denied Student services and offered placement that San Francisco Unified staff disagreed with,
    f. concealing the severity of Student's behaviors and their use of restraint and seclusion practices,

g. blaming Parents for Student's declining behaviors and retaliating against Parents by calling child protective services for behaviors San Francisco Unified failed to address, and

h. failing to discuss Parents' concerns during the IEP team meetings on September 10, 2020, October 20, 2020, and May 14, 2021?

5. During the 2020-2021 school year, did San Francisco Unified unilaterally deny services to Student, specifically:

   a. placement at a nonpublic school,

   b. intensive behavior services,

   c. speech and language social skills,

   d. applied behavior analysis,

   e. occupational therapy,

   f. physical therapy, and

   g. counseling?

6. During the 2020-2021 school year, did San Francisco Unified deny Student a FAPE by offering him placement in a general education classroom without a properly trained full time one-to-one behavior therapist?

7. During the 2020-2021 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate and quantifiable goals in all areas of need, specifically:

   a. behavior,

   b. social emotional, and

   c. writing?

8. During the 2020-2021 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate accommodations of a:

   a. safe place on campus, and

b. safe person on campus?

9. During the 2021-2022 school year, did San Francisco Unified fail to produce any behavior emergency reports for Student?
10. During November and December 2021, did San Francisco Unified deny Student his procedural rights when they failed to hold emergency IEP team meetings to discuss behavior emergency reports?
11. During the 2021-2022 school year, did San Francisco Unified unlawfully restrain and seclude Student and fail to accurately and timely report the restraints and seclusions to Parents?
12. During the 2021-2022 school year, did San Francisco Unified fail to conduct assessments for Student, specifically a:
    a. functional behavioral assessment,
    b. speech and language,
    c. physical therapy, and
    d. educationally related mental health?
13. During the 2021-2022 school year, did San Francisco Unified deny Student a FAPE by creating a hostile learning environment at Grattan Elementary?
14. During the 2021-2022 school year, did San Francisco Unified significantly impede Parents' ability to meaningfully participate in the IEP decision-making process by:
    a. failing to provide Parents with consistent IEP progress reports,
    b. misrepresenting Student's present levels of performance,
    c. failing to consider the concerns and recommendations from Parents' and independent professionals,

d. failing to provide Parents with legally complaint prior written notices when they denied Student services and offered placement that San Francisco Unified staff disagreed with,
e. concealing the severity of Student's behaviors and their use of restraint and seclusion practices,
f. blaming Parents for Student's declining behaviors and retaliating against Parents by calling child protective services for behaviors San Francisco Unified failed to address, and
g. failing to discuss Parents' concerns during the IEP team meeting on January 25, 2022?

15. During the 2021-2022 school year, did San Francisco Unified unilaterally deny services to Student, specifically:
    a. placement at a nonpublic school,
    b. intensive behavior services,
    c. speech and language social skills,
    d. applied behavior analysis,
    e. occupational therapy,
    f. physical therapy, and
    g. counseling?
16. During the 2021-2022 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate special education services to address his:
    a. academic,
    b. social,
    c. behavioral, and
    d. emotional needs?

17. During the 2021-2022 school year, did San Francisco Unified deny Student a FAPE by failing to:
    a. draft an appropriate positive behavior intervention plan,
    b. implement Student's operative IEP, and
    c. discuss Parents' concerns during the IEP team meeting on January 25, 2022?
18. During the 2021-2022 school year, did San Francisco Unified deny Student a FAPE by offering him placement in a general education classroom without a properly trained full time one-to-one behavior therapist?
19. During the 2021-2022 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate and measurable goals in all areas of need, specifically:
    a. behavior,
    b. social emotional, and
    c. writing?
20. During the 2021-2022 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate accommodations of a:
    a. safe place on campus, and
    b. safe person on campus?
21. During the 2022-2023 school year, did San Francisco Unified fail to conduct assessments for Student, specifically:
    a. functional behavioral assessment,
    b. speech and language,
    c. physical therapy, and
    d. educationally related mental health?

22. During the 2022-2023 school year, did San Francisco Unified deny Student a FAPE by:
    a. failing to draft an appropriate positive behavior intervention plan,
    b. creating a hostile learning environment at Grattan Elementary,
    c. failing to consider the recommendations of independent professionals when San Francisco Unified denied Student placement at a therapeutic day program nonpublic school during the May 1, 2023, IEP team meeting,
    d. failing to implement Student's operative IEP, and
    e. offering him placement in a general education classroom without a properly trained full time one-to-one behavior therapist?
23. During the 2022-2023 school year, did San Francisco Unified significantly impede Parents' ability to meaningfully participate in the IEP decision-making process by:
    a. failing to provide Parents with consistent IEP progress reports,
    b. misrepresenting Student's present levels of performance,
    c. failing to consider the concerns and recommendations from Parents' and independent professionals,
    d. failing to provide Parents with legally complaint prior written notices when they denied Student services and offered placement that San Francisco Unified staff disagreed with,
    e. concealing the severity of Student's behaviors and their use of restraint and seclusion practices,
    f. blaming Parents for Student's declining behaviors and retaliating against Parents by calling child protective services for behaviors San Francisco Unified failed to address, and

g. failing to discuss Parents' concerns during the IEP team meetings on April 18, 2023, May 1, 2023, and May 24, 2023?

24. During the 2022-2023 school year, did San Francisco Unified unilaterally deny services to Student, specifically:
    a. placement at a nonpublic school,
    b. intensive behavior services,
    c. speech and language social skills,
    d. applied behavior analysis,
    e. occupational therapy,
    f. physical therapy, and
    g. counseling?
25. During the 2022-2023 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate special education services to address his:
    a. academic,
    b. social,
    c. behavioral, and
    d. emotional needs?
26. During the 2022-2023 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate and measurable goals in all areas of need specifically:
    a. behavior,
    b. social emotional, and
    c. writing?
27. During the 2022-2023 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate accommodations of a:

a. safe place on campus, and
b. safe person on campus?

28. During the 2023-2024 school year, did San Francisco Unified fail to conduct assessments for Student, specifically:
    a. functional behavioral assessment,
    b. speech and language,
    c. physical therapy, and
    d. educationally related mental health?
29. During the 2023-2024 school year, did San Francisco Unified significantly impede Parents' ability to meaningfully participate in the IEP decision-making process by:
    a. failing to provide Parents with consistent IEP progress reports,
    b. misrepresenting Student's present levels of performance,
    c. failing to consider the concerns and recommendations from Parents' and independent professionals,
    d. failing to provide Parents with legally complaint prior written notices when they denied Student services and offered placement that San Francisco Unified staff disagreed with,
    e. concealing the severity of Student's behaviors and their use of restraint and seclusion practices,
    f. blaming Parents for Student's declining behaviors and retaliating against Parents by calling child protective services for behaviors San Francisco Unified failed to address,
    g. failing to provide all of Student's educational records including but not limited to behavior emergency reports and suspension notices, and

h. failing to discuss Parents' concerns during the IEP team meetings on August 29, 2023, October 5, 2023, and December 18, 2023?

30. During the 2023-2024 school year, did San Francisco Unified deny Student a FAPE by:
    a. failing to draft an appropriate positive behavior intervention plan,
    b. creating a hostile learning environment at Grattan Elementary,
    c. by failing to consider the recommendations of independent professionals when San Francisco Unified denied Student placement at a therapeutic day program nonpublic school during the October 5, 2023, and December 18, 2023, IEP team meetings,
    d. failing to implement Student's operative IEP including the positive behavior intervention plan dated December 18, 2023, and
    e. offering him placement in a general education classroom without a properly trained full time one-to-one behavior therapist?
31. During the 2023-2024 school year, did San Francisco Unified unilaterally deny services to Student specifically:
    a. placement at a nonpublic school,
    b. intensive behavior services,
    c. speech and language social skills,
    d. applied behavior analysis,
    e. occupational therapy,
    f. physical therapy, and
    g. counseling?
32. During the 2023-2024 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate special education services to address his:

a. academic,

b. social,

c. behavioral, and

d. emotional needs?

33. During the 2023-2024 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate and measurable goals in all areas of need specifically:

a. behavior,

b. social emotional, and

c. writing?

34. During the 2023-2024 school year, did San Francisco Unified deny Student a FAPE by failing to offer Student appropriate accommodations of a:

a. safe place on campus, and

b. safe person on campus?

35. During the 2023-2024 school year, did San Francisco Unified deny Student his procedural rights when they failed to hold emergency IEP team meetings to discuss behavior emergency reports on:

a. November 8, 2023,

b. December 6, 2023,

c. January 9, 2024,

d. January 17, 2024, and

e. February 15, 2024?

36. During the 2023-2024 school year, did San Francisco Unified unlawfully restrain and seclude Student and fail to accurately and timely report the restraints and seclusions to Parents?

A party must immediately file a written objection with OAH if the issues as described above do not reflect the party's understanding of the issues as clarified at the PHC. The ALJ will address any objections on the first day of hearing.

PROPOSED RESOLUTIONS

Student requests reimbursement, compensatory education, independent educational evaluations, and training for San Francisco Unified staff. Student also requests a nonpublic school placement with transportation and additional related services.

San Francisco Unified filed its response to Student's complaint on March 15, 2024. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. San Francisco Unified must use the letter D before the number to identify its exhibits. For example, S-1 means Student's exhibit 1 and D-1 means San Francisco Unified's exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

Parties should include resumes or curriculum vitae for each witness expected to testify as an expert.

San Francisco Unified's exhibits must include a copy of the school calendar for each school year in question.

Electronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically. It includes instructions for how to file exhibits electronically. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

WITNESSES

The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants who have not previously used the Zoom application, may find informative instructions on at by visiting, Getting Started with Zoom at https://support.zoom.us/hc/en-us/categories/200101697.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without video. A witness's inability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order.

The ALJ has discretion to limit the number of witnesses and the time allowed for testimony. Education Code section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The

first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than 5:00 PM on May 16, 2024, to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, San Francisco Unified shall inform Student which proposed witnesses are San Francisco Unified employees. San Francisco Unified shall also identify the witnesses on Student's list that require a subpoena. San Francisco Unified may agree to accept service for a witness under its control or provide Student with the witness's most recent contact information.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the

opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information shall not be disclosed to any other person.

EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case, Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by San Francisco Unified, unless otherwise ordered.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. San Francisco Unified must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The

ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference 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 audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. the OAH recording is the only official recording,

2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record,
3. operation of the party's recording mechanism will not be allowed to delay the hearing,
4. a party's recording may not be given, provided or played to a witness, or potential witness,
5. the recording is subject to the same confidentiality as the due process hearing, and
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's and San Francisco Unified's request to make an audio recording of the hearing is granted.

VIDEO RECORDING

No party, witness or anyone else may videorecord any part of the proceedings or stream live through any means.

RECORDINGS AS EXHIBITS

Recordings may not be uploaded electronically without the ALJ's permission. The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing.

The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable

portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

San Francisco Unified filed three motions in limine on May 10, 2024. Student responded to San Francisco Unified's motions during the PHC.

San Francisco Unified's first motion is a request to limit its liability to between March 4, 2022, and March 4, 2024. San Francisco Unified's motion is a reiteration of its motion to dismiss. For the same response discussed in denying the motion to dismiss, San Francisco Unified's motion to limit its liability is also denied.

San Francisco Unified's second motion is to exclude any confidential communications regarding offers of placement, supports, or services that occurred during mediations in this matter, with the exception of the interim compromise and release agreement, executed by both parties on March 18, 2024. Communications, negotiations, or settlements discussions by and between parties in the course of

mediation is confidential. (Evid. Code, § 1119, subd. (c).) Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under the Evidence Code before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends. (Evid. Code, 1127.) San Francisco Unified's motion is denied as it is unnecessary. Settlement discussions during mediation are confidential and do not require a separate order from OAH to remain so.

San Francisco Unified's third motion is to exclude testimony from three witnesses on Student's witness list. The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ. San Francisco Unified's motion to exclude testimony is not ripe. Student has an obligation to provide notice of any witness he may potentially call. The parties are ordered to discuss their proposed witness lists at the meet and confer. San Francisco Unified's motion to exclude testimony is denied without prejudice. San Francisco Unified may renew its objection to any potential witness on the first day of hearing.

No additional prehearing motions are pending or contemplated. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither party requested and accommodation or language interpretation.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line.

Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings.

HEARING OPEN TO THE PUBLIC

The hearing is open to the public. Special education hearings are closed to the public unless a student requests the hearing to be open to the public.

An ALJ may restrict attendance because of the physical limitations of the hearing facility or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case.

No witness may observe the hearing before they have testified. Additionally, any person observing the hearing must include their full name when signing on to Zoom so the ALJ knows who is observing the hearing. All observers must keep their video and microphone off at all times. Any observer who fails to keep their video and microphone off may be excluded from the hearing.

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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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 before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may

not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings