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10 Attorneys for Defendant

11 SAN FRANCISCO UNIFIED SCHOOL DISTRICT

12  
13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 NADINE DUFFIN, parent of TYRE Doc. 2595  
DUFFIN, a disabled child as defined by  
16 the Individuals with Disabilities Education  
Act, and CHILDREN'S LAW OFFICE by  
17 Carole Brill, attorney for Nadine and Tyre  
Duffin in a Due Process Proceeding as  
18 delineated by the Individuals with  
Disabilities Education Act,

19 Plaintiffs,

20 vs.

21 SAN FRANCISCO UNIFIED SCHOOL  
22 DISTRICT,

23 Defendant.

USCD No. C 04 4528 JCS

**JOINT CASE MANAGEMENT  
STATEMENT**

Date Filed: February 25, 2005

24 The parties to this action jointly submit this Case Management Statement and request the  
25 Court to adopt it as the Case Management Order in the case.

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1  
2 1) **Agenda Items**

3 a) **The basis for this Court's subject matter jurisdiction and whether any issue exists**  
4 **regarding personal jurisdiction or venue.**

5 Response: This court has subject matter jurisdiction pursuant to 20 USC 1415(i)(2)(A)  
6 and 28 USC 1331. No issue exists with regards to personal jurisdiction or venue.

7 b) **The factual and legal bases for plaintiff's claims, defendant's defenses, defendant's**  
8 **counterclaims and the defenses to those counterclaims.**

9 Response: Plaintiffs and defendant agree that the background facts and timeline of  
10 meeting/events are relevant, along with other facts, to the determination of whether  
11 plaintiffs are entitled to attorneys fees as prevailing party:

12 **Background**

13  
14 Plaintiff NADINE DUFFIN is the mother of Tyre Duffin, a minor child enrolled in the  
15 defendant school district who is a disabled child as defined by the IDEA. Plaintiff NADINE  
16 DUFFIN retained CAROLE BRILL, an active member of the State Bar of California and the  
17 Director of CHILDREN'S LAW OFFICE, to represent her and Tyre to obtain the benefits of  
18 the IDEA for Tyre.

19 Plaintiff TYRE DUFFIN is a twelve year old child with severe mobility, communication,  
20 health and learning disabilities who is enrolled in the defendant school district. Plaintiff  
21 TYRE DUFFIN and plaintiff NADINE DUFFIN are collectively referred to herein as  
22 "Plaintiffs."

23 Plaintiff CHILDREN'S LAW OFFICE is a non-profit, charitable corporation that  
24 provides otherwise unavailable free legal services for children in areas such as education,  
25 special education and disabilities, child abuse, neglect and molestation.

26 Defendant SAN FRANCISCO UNIFIED SCHOOL DISTRICT (SFUSD or District) is a  
27 publicly financed school district which, among other things, administers programs and  
28 provides benefits as required under the IDEA.

Tyre Duffin (DOB: 3-27-92)  
Timeline of Meetings/Events

2-15-02 Letter from attorney Carole Brill to District complaining of late pickup of  
Student by school bus

1 3-25-02 The March 25, 2002 IEP described Tyre's level of performance, his grade  
2 as third grade, the equipment he used, specifics of his mainstream  
3 participation, transportation and nursing needs and the like. The March  
4 25, 2002 IEP was the last agreed upon IEP until the Final Mediation  
5 Agreement of June 24, 2004. Tyre attended Bridge School, as a student in  
6 the 3<sup>rd</sup> grade during the 2001-2002 academic year with Parent agreeing to  
7 placement (signed IEP)

8 2002-03 Tyre transferred to Francis Scott Key Elementary, as a student in the 4<sup>th</sup>  
9 grade.

10 4-8-03 IEP meeting held where Ms. Duffin did not sign IEP

11 5-15-03 IEP meeting held where Ms. Duffin did not sign IEP

12 5-27-03 IEP meeting held where Ms. Duffin did not sign IEP

13 8-6-03 Carole Brill files for a Due Process hearing on behalf of Tyre Duffin

14 8-6-03 Carole Brill, on behalf of Tyre, files statement of exception to the above  
15 IEP meetings that were held on 4-8-03, 5-15-03, and 5-27-03. Plaintiffs  
16 summary of the statement is that nine items of exception are discussed  
17 including the need for each of the following:

- 18 a. A new talker;
- 19 b. Evaluations;
- 20 c. Equipment;
- 21 d. Nursing;
- 22 e. Transportation;
- 23 f. Support for school personnel;
- 24 g. Designated Instructional Services;
- 25 h. Training and on-going communication/consultation for Nadine  
26 Duffin;
- 27 i. Peer Interaction.

28 8-29-03 The District and Ms. Brill, representing Nadine and Tyre Duffin, engage  
in mediation which did not lead to a resolution.

9-11-03 "Final" Mediation Agreement proposed by District and faxed to Ms, Brill;  
no overall agreement was reached, but the parties agreed upon an  
assessment plan.

10-8-03 Ms. Brill wrote to the mediator and the District summarizing the status of  
the negotiations and outlined various proposed changes to the District's  
proposed "Final Mediation Agreement"-

12-18-03 IEP meeting held where Ms. Duffin did not sign IEP

1-9-04 IEP meeting held where Ms. Duffin did not sign IEP

3-7-04 IEP meeting held, not completed, continued to 3-11-04

3-11-04 IEP meeting held where Ms. Duffin did not sign IEP

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1 6-23-04 Final Mediation Agreement whereby all Student issues are resolved except  
2 for possible payment of attorney fees. Plaintiffs claim that this Final  
3 Mediation Agreement also resolved issues relating to Tyre's requests for

- 4 a. A new talker;
- 5 b. Evaluations;
- 6 c. Equipment;
- 7 d. Nursing;
- 8 e. Transportation;
- 9 f. Support for school personnel;
- 10 g. Designated Instructional Services;
- 11 h. Training and on-going communication/consultation for Nadine  
12 Duffin;
- 13 i. Peer Interaction.

14 Defendant claims that this Final Mediation Agreement merely complied  
15 the particulars of all of the previous IEPs that Ms. Duffin did not  
16 previously sign.

17 7-9-04 Carole Brill requested attorney fees and expenses of \$22,507 for 74.85  
18 hours for services provided from the 8-6-03 filing for Due Process through  
19 the 6-23-04 Final Mediation Agreement

20 8-5-04 Attorney Chandler Visher requested payment of attorney fees on behalf of  
21 Carole Brill

22 Defendant has no counterclaims.

- 23 c) **Any related proceedings, including any administrative proceedings, and any related  
24 cases pending before other judges of this court or before any other court.**

25 Response: There are no related proceedings nor any related cases pending before other  
26 judges of this court or before any other court.

- 27 d) **Whether all parties consent to the jurisdiction of a Magistrate Judge for all  
28 purposes, including trial and entry of judgment.**

Response: Yes, all parties consent to the jurisdiction of Magistrate Judge Spero for all  
purposes.

- e) **A brief summary of the proceedings to date, including whether or not there has  
been full compliance with the initial disclosure requirements of FRCP 26.**

Response: The parties held a conference in accordance with Rule 26(f) on January 31,  
2005. At the conference, the parties agreed that defendant will provide a copy of Tyre  
Duffin's entire IEP file to the plaintiffs by February 14, 2005. The parties agreed that

1 Tyre Duffin's complete IEP file contains all of the relevant documents subject to initial  
2 disclosure. Defendant will mark the IEP file Bates Numbers for ease of reference. The  
3 plaintiffs will then provide the defendant with any documents that they believe are  
4 relevant and subject to the initial disclosure requirement by February 28, 2005. Plaintiffs  
5 will mark any additional documents with Bates Numbers in continuing sequential order.  
6 This process will allow the parties to compile an agreed upon set of documents for this  
7 matter.

8 **f) A description of all pending motions and their current status.**

9 Response: There are no pending motions.

10 **g) A description of all motions expected before trial.**

11 Response: The parties agree that a legal question exists as to whether any plaintiff who  
12 requests a due process hearing can be entitled to attorney fees as the prevailing party if  
13 the case results in a binding mediation agreement through the IEP process, without a due  
14 process hearing, rather than a decision after a due process hearing. If, as plaintiffs  
15 believe, a plaintiff achieving such a mediation agreement may be so entitled, then the  
16 only other substantive issue here is whether the substantive results achieved in the  
17 mediation are sufficient to find that plaintiffs are the prevailing parties so as to be  
18 entitled to fees as a matter of fact. If, as defendant believes, plaintiffs are not legally  
19 entitled to attorney fees under these circumstances, then defendant would prevail.

20 Accordingly, the parties agree to file cross-motions for summary adjudication and/or  
21 summary judgment. Based on scheduling conflicts between the parties discussed at the  
22 Rule 26(f) conference, the parties propose the filing of cross-motions as follows:

23 Defendant will file a motion for summary judgment by July 29, 2005. In response,  
24 Plaintiffs will file a cross-motion for summary adjudication and opposition to defendant's  
25 motion by August 12, 2005. Defendant will file an opposition to plaintiffs' motion for  
26 summary adjudication and a reply to the opposition by August 26, 2005. In response,  
27 plaintiffs' will file a reply to the opposition to their motion for summary adjudication by  
28

1 September 2, 2005. The parties propose scheduling a hearing on the cross-motions for  
2 summary judgment/adjudication to be held on September 16, 2005.

3 **h) The extent to which new parties will be added or existing parties deleted, deadlines**  
4 **for adding and deleting parties, and deadlines for amendment of pleadings.**

5 Response: No new parties are expected to be added, nor are any existing parties expected  
6 to be deleted.

7 **i) The extent to which evidentiary, claim construction, or class certification hearings**  
8 **are anticipated.**

9 Response: No evidentiary, claim construction, or class certification hearings are  
10 anticipated.

11 **j) The scope of discovery to date and, separately, the scope of anticipated discovery,**  
12 **including limits that should be imposed on discovery and a proposed discovery plan**  
13 **pursuant to FRCP 26(f).**

14 Response: Initial disclosure as described in 1(e) will be completed by February 28, 2005.  
15 In an effort to save the court's time as well as attorneys' fees, the parties propose to  
16 bifurcate the issues and resolve the dispositive legal issue as discussed in 2(a) below  
17 Beyond initial disclosures, no further discovery is anticipated unless and until the  
18 plaintiffs prevail in their motion for summary adjudication. If plaintiffs prevail, then the  
19 parties request that the Court hold another Case Management Conference to discuss  
20 additional discovery, if any.

21 **k) The extent to which any special discovery or other problems or issues have arisen or**  
22 **are expected.**

23 Response: No special discovery or other problems or issues have arisen or are expected to  
24 arise.

25 **l) Proposed deadlines and court dates, including trial date.**

26 Response: If the court allows the dispositive issues to be bifurcated, the only deadlines  
27 proposed are those for initial disclosure discussed in 1(e) and the motion for summary  
28 judgment and/or adjudication discussed in 1(g).

1 m) **The expected length of trial, approximate number of witnesses, experts, exhibits,**  
2 **and whether a jury is demanded.**

3 Response: It is premature at this time to determine the length of trial, the number of  
4 witnesses, experts and exhibits, and whether a jury trial is needed in light of the parties'  
5 proposal to bifurcate this matter.

6 n) **What damages and other relief are sought and what method is used to compute such**  
7 **damages.**

8 Response: Plaintiffs' claim for \$22,507 in attorneys' fees for Ms. Brill's representation  
9 of Ms. Duffin through June 30, 2004 is based on the lodestar method of calculating fees.  
10 Plaintiffs additionally seek reimbursement of attorney fees incurred in the present action  
11 as allowed by law.

12 o) **ADR efforts to date and specific ADR plan for the case.**

13 Response: The parties believe there may be a role for mediation if the plaintiffs prevail  
14 on their cross-motion for summary adjudication.

15 p) **The extent to which a special master should be involved in the case.**

16 Response: A special master will not be needed in this case.

17 q) **A service list for all counsel that includes telephone and fax numbers.**

18 Response: See attached service list.

19 r) **Such other matters as any party considers conducive to the just, speedy and**  
20 **inexpensive determination of this action.**

21 Response: There are no other matters at this time that the parties consider conducive to  
22 the just, speedy and inexpensive determination of this action.

23 **2) FRCP 16(c)**

24 a) **The formulation and simplification of the issues.**

25 Response: The parties propose to first resolve the dispositive legal issue of whether  
26 plaintiffs are entitled to attorneys' fees as a prevailing party under the circumstances of  
27 this case. The federal circuit courts appear to conflict in their treatment of this legal  
28 question, and as a result, the parties agree that by bifurcating the issues in this matter,

1 they may be able to resolve this dispute as a matter of law. This would save the court's  
2 time as well as additional attorneys' fees if the defendant prevails on its motion for  
3 summary judgment.

4 **b) The necessity or desirability of amendments to the pleadings.**

5 Response: There are no amendments to the pleadings.

6 **c) The possibility of obtaining admissions of fact and of documents which will avoid  
7 unnecessary proof, stipulations regarding the authenticity of documents, and  
8 advance ruling from the court on the admissibility of evidence.**

9 Response: See response to 1(e).

10 **d) The avoidance of unnecessary proof and of cumulative evidence, and limitations or  
11 restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence.**

12 Response: See response to 2(c).

13 **e) The appropriateness and timing of summary adjudication under Rule 56.**

14 Response: See response to 1(g).

15 **f) The control and scheduling of discovery, including orders affecting disclosures and  
16 discovery pursuant to Rule 26 and Rules 27 through 37.**

17 Response: See response to 1(e) and 1(j).

18 **g) The identification of witnesses and documents, the need and schedule for filing and  
19 exchanging pretrial briefs, and the date or dates for further conferences and for  
20 trial.**

21 Response: If the plaintiffs prevail on their cross-motion for summary adjudication, then  
22 the parties may engage in limited discovery and ADR. If the court allows for a bifurcated  
23 procedure, then the parties will not conduct further discovery beyond initial disclosures  
24 unless the plaintiffs prevail on their cross-motion for summary adjudication. Thus, the  
25 parties propose a further case management conference if plaintiffs prevail on their cross-  
26 motion for summary adjudication.

27 **h) The advisability of referring matters to a magistrate judge or master.**

28 Response: The parties have consented to a magistrate judge.



1 i) **Settlement and the use of special procedures to assist in resolving the dispute when**  
2 **authorized by statute or local rule.**

3 Response: See the response to 1(o).

4 j) **The form and substance of the pretrial order.**

5 Response: If the plaintiffs prevail on their cross-motion for summary adjudication, then  
6 the parties request that the Court hold an additional Case Management Conference to  
7 discuss pre-trial and trial matters.

8 k) **The disposition of pending motions.**

9 Response: N/A

10 l) **The need for adopting special procedures for managing potentially difficult or**  
11 **protracted actions that may involve complex issues, multiple parties, difficult legal**  
12 **questions or unusual proof problems.**

13 Response: N/A

14 m) **An order for a separate trial pursuant to Rule 42(b) with respect to a claim,**  
15 **counterclaim, cross-claim, or third-party claim, or with respect to any particular**  
16 **issue in the case.**

17 Response: See the response to 2(a).

18 n) **An order directing a party or parties to present evidence early in the trial with**  
19 **respect to manageable issue that could, on the evidence, be the basis for a judgment**  
20 **as a matter of law under Rule 50(a) or a judgment on partial findings under Rule**  
21 **52(c).**

22 Response: See the response to 2(a).

23 o) **An order establishing a reasonable limit on the time allowed for presenting**  
24 **evidence.**

25 Response: If the court allows this matter to be bifurcated, it would be appropriate to  
26 fashion such an order following a further case management conference.

27 p) **Such other matters as may facilitate the just, speedy and inexpensive disposition of**  
28 **the action.**

1 Response: There are no additional matters that may facilitate the just, speedy, and  
2 inexpensive disposition of the action.

3 **3) FRCP 26(f)**

4 a) **What changes should be made in the timing, form, or requirement for disclosures**  
5 **under 26(a), including a statement as to when disclosures under rule 26(a)(1) were**  
6 **made or will be made.**

7 Response: See the response to 1(g).

8 b) **The subjects on which discovery may be needed, when discovery should be**  
9 **completed, whether discovery should be conducted in phases or be limited to or**  
10 **focused upon particular issues.**

11 Response: See the response in 1(j).

12 c) **What changes should be made in the limitations on discovery imposed under these**  
13 **rules by local rule, and what other limitations should be imposed.**

14 Response: There should be no changes to the limitations on discovery.

15 d) **Any other orders that should be entered by the court.**

16 Response: There are no other orders that should be entered by the court.

17  
18 Dated: 02-25-05

DENNIS HERRERA, CITY ATTORNEY

19  
20 By: Miguel Marquez  
21 Miguel Marquez, Deputy

22  
23 Dated: \_\_\_\_\_

LAW OFFICES OF  
S. CHANDLER VISHER

24 By: \_\_\_\_\_  
25 S. Chandler Visher  
26 Attorneys for Plaintiffs  
27  
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2 inexpensive disposition of the action,

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17  
18 Dated: \_\_\_\_\_

DENNIS HERRERA, CITY ATTORNEY

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By: \_\_\_\_\_

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Miguel Marquez, Deputy

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23 Dated: Feb 25, '05

LAW OFFICES OF  
S. CHANDLER VISHER

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By: 

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S. Chandler Visher  
Attorneys for Plaintiffs

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