BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: DEHESA ELEMENTARY SCHOOL DISTRICT AND COMMUNITY MONTESSORI CHARTER SCHOOL, v. PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2016090241
PARENTS ON BEHALF OF STUDENT, v. DEHESA ELEMENTARY SCHOOL DISTRICT AND COMMUNITY MONTESSORI CHARTER SCHOOL.	OAH Case No. 2016080384 ORDER FOLLOWING PREHEARING CONFERENCE OF SEPTEMBER 30, 2016; ORDER CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On September 30, 2016, Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings, held a telephonic prehearing conference. Deborah R.G. Cesario, Attorney at Law, appeared on behalf of the Dehesa Elementary School District and the Community Montessori Charter School (collectively, Districts). Cara Lucier, Attorney at Law, appeared on behalf of Student and his parents. The ALJ recorded the PHC.

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

1. Motion to Continue. Districts filed a motion to continue the hearing, which Student opposed. Districts request a short continuance based upon conflicts in Ms. Cesario's schedule; she is scheduled to start another OAH hearing on October 11, 2016, in a case where no further continuances are contemplated, and has another hearing scheduled to begin on October 25, 2016. Additionally, the Executive Director for the entity overseeing Community Montessori, who will be representing the school at the hearing, has been on a pre-planned vacation since mid-September, and is not due to return to California until October 2, two days before the date this hearing is presently scheduled to begin. Districts assert that there will be insufficient time for her to prepare for hearing, both as a witness and as a representative, in two days.

Student opposes the continuances on the grounds that he does not believe Districts' basis for the request is supported by good cause. Student also states that he and his parents will be prejudiced by a delay. Student states that a delay in the hearing will exacerbate his anxiety and cause him further emotional and physical distress. It is unclear upon what basis Student makes this assertion. Student also asserts that his parents will be financially prejudiced because they are funding his placement at a non-public school based upon Districts' alleged violations of his rights under the Individuals with Disabilities Education Act.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Student did not provide a declaration or other supporting evidence as to the financial burden his parents are suffering based upon their decision to unilaterally place Student at a non-public school. However, taking the representations in Student's opposition as true, a brief delay in the hearing based upon good cause demonstrated, will not substantially burden Parents. Should Student prevail on any or all of his case, reimbursement of the tuition and expenses for Student's attendance at the non-public school may be an appropriate remedy.

Additionally, Student has indicated that this case will take approximately 40 hours for both sides to present, which represents six to seven hearing days. Given that Districts' attorney is scheduled to begin another hearing on October 11, 2016, this case would have to be continued until after October 11 in order for all evidence to be presented. Counsel for Districts is also scheduled to begin a hearing in another case on October 25, 2016, which is older than the present case. It is preferable that this matter be heard on contiguous dates.

Given the totality of the circumstances, and the fact that this is an initial request to continue based on Districts' due process filing, Districts have shown good cause for the requested continuance and their motion to continue is granted. The present hearing dates are vacated. This matter is continued as follows:

PREHEARING CONFERENCE: October 24, 2016, at 10:00 a.m.

DUE PROCESS HEARING: November 1, 2, 3, 8, 9, and 10, 2016, beginning at 9:30 a.m. on November 1 and 8, 2016, and at 9:00 a.m. all other days, and continuing day to day Monday through Thursday, at the discretion of the ALJ.

2. The hearing is presently set to take place at the Dehesa Elementary School District's offices, located at 4612 Dehesa Road, El Cajon, California, 92019. Student has requested that it be held at the OAH offices in San Diego. Districts oppose the request and instead wish to propose an alternate location in North County, San Diego, close to Student's home. The ALJ will address this issue at the PHC and will determine the location of the hearing once Districts have proposed an alternate location.

3. If Districts propose that the hearing be held at a location other than the OAH offices, they shall file a certificate that the proposed location 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 Districts shall file the certificate prior to the PHC scheduled for October 24, 2016.

4. 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. THE PARTIES SHOULD SIMULTANEOUSLY **FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE 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.

IT IS SO ORDERED.

DATE: September 30, 2016

DocuSigned by:
Darrell Lepkowsky
A228F8201132499...

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings