BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015120968 ORDER GRANTING STUDENT'S MOTION TO CHANGE DUE PROCESS HEARING LOCATION TO OAH'S OFFICE IN VAN NUYS

On December 18, 2015, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Tehachapi Unified School District. At the May 23, 2016 prehearing conference, Student requested a change of hearing venue whereupon OAH set a motion briefing schedule.

On May 25, 2016, Student filed his motion for hearing venue change (Motion) based on Student's counsel, Andrea Marcus's, contention of a hostile environment and potential threats to her safety in Tehachapi. Ms. Marcus requested the venue be changed to OAH's office in Van Nuys, or, in a neutral location, in Bakersfield. On May 26, 2016, District opposed Student's Motion citing inconvenience to the parties and witnesses of having to travel approximately 100 miles to Van Nuys, and 50 miles to Bakersfield, and unreasonable expense and delay to proceedings if the venue were moved outside of Tehachapi.

APPLICABLE LAW AND DISCUSSION

Under the Individuals with Disabilities Act and state law, hearings must be conducted at a time and place that is reasonably convenient to the parents and child involved. (34 C.F.R. §300.515(d); Ed. Code, §56505(b).) "Reasonably convenient" does not mean that the hearing may be located anywhere a parent chooses. Therefore, due process hearings are generally scheduled at the school district offices, the office of the Special Education Local Plan Area to which the District belongs, or the regional OAH office closest to the parents' residence. The administrative law judge has discretion to grant or deny a change of the hearing. (See Gov. Code, § 11508.)

Ms. Marcus' declaration in support of the Motion detailed a series of encounters with local law enforcement in Tehachapi, including being followed from Starbucks to District's office by a police cruiser, and then being menaced by that same cruiser in the District's parking lot. Ms. Marcus also stated that she cannot enter Kern County, generally, because of her safety concerns triggered from the possible connections between District and the Kern County education and law enforcement authorities. Ms. Marcus stated that she feared

retaliation from local authorities because of her advocacy on behalf of District's students. She believed that Kern County is unreasonably dangerous, and that she will potentially be subjected to violence in Kern County. Mother's declaration in support of the Motion requested that the hearing be held outside of Tehachapi so that her counsel could appear at hearing without safety concerns. Mother stated that she would be deprived of attorney representation if the hearing were held in Tehachapi.

District's opposition questions the likelihood and specificity of Ms. Marcus' safety concerns. Additionally, District included a letter from Kern County's Assistant Superintendent of Educational Services, Christine Frazier, stating that it has no facilities to lend to this particular hearing. Further, Ms. Frazier stated any facility that it has to lend to an OAH hearing would be located at the same location and floor as the employees' offices of the Kern County Superintendent of Schools. On a prior occasion where it provided facilities for an OAH hearing, Ms. Marcus' abusive conduct toward the Kern County Superintendent of Schools' employees caused them great discomfort and was disruptive to its working environment.

Student articulates a colorable claim of potential threats or safety concerns in Tehachapi sufficient to support moving the hearing from Tehachapi. Balancing the interest of all of the parties and availability of hearing venues, the hearing shall proceed at OAH's office located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406, at the dates and times ordered in the May 23, 2016 Order Following Prehearing Conference. To ameliorate the expense and inconvenience of having District's witnesses travel to Van Nuys for the hearing, District's witnesses may testify by telephone, or videoconference. District's counsel is ordered to prepare its witnesses for telephonic testimony, or videoconference to avoid hearing delays. The parties are ordered to meet and confer following this order regarding all witness issues in compliance with paragraph six of the May 23, 2016 PHC order on telephonic testimony, including providing witnesses testifying telephonically, or by videoconference, with a copy of both parties' exhibit binders**.** Only District's witnesses, or employees of District, may testify by telephone, unless Student, as the proponent of the venue change, can show why telephonic testimony is required, as set forth in the May 23, 2016 PHC order.

ORDER

The hearing shall be held in OAH's office located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406, at the dates and times ordered in the May 23, 2016 Order Following Prehearing Conference.

DATE: May 27, 2016

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings