BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CITRUS SPRINGS CHARTER SCHOOL,	OAH Case No. 2018100703
CITRUS SPRINGS CHARTER SCHOOL, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019020360 ORDER FOLLOWING PREHEARING CONFERENCE AND ORDER GRANTING CONTINUANCE

On March 12, 2019, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Parent appeared on behalf of Student. Jim Sanft, Attorney at Law, appeared on behalf of Citrus Springs Charter School. The PHC was recorded.

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

1. Continuance. On February 27, 2019, Citrus Springs filed a motion to dismiss the due process hearing request filed by Student in OAH case 2018100703 on October 16, 2018, and amended on January 22, 2019 (Student's amended complaint). Student filed an opposition on February 28, 2019. The motion to dismiss was taken up and argued at the prehearing conference.

Citrus Springs sought dismissal on two grounds. First, it sought dismissal of claim three in Student's amended complaint on the grounds that the issue was moot. The claim asserted that Citrus Springs did not provide assessment reports to Parent prior to the Individualized Education Program team meeting despite a request by Parent pursuant to California Education Code section 56043, subdivision (n). Citrus Springs asserts that this claim is moot because Student has received all requested reports. Taken as a whole, Student's amended complaint presents in claim three an assertion that Parent was denied her ability to participate in the decision-making process regarding Student's educational planning because she did not get the reports in advance of the IEP team meeting. Student's proposed remedy #3 is a finding by OAH that Citrus Springs significantly infringed on parent

participation in formulating the IEP because it did not provide the assessment reports. The claim is not moot as it asserts more than simple failure to provide the evaluations to Parent.

Secondly, Citrus Springs seeks dismissal of Student's amended complaint because Parent would not waive her right to an early resolution conference or attend such a conference either telephonically or at sites chosen by Citrus Springs. A local educational agency must convene a resolution conference with the parents and the relevant members of the IEP team within 15 days of receiving notice of a student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The requirement may be waived if both sides agree to do so. (34 C.F.R. § 300.510(a)(3).) Otherwise, if the Parent is unwilling to attend a resolution meeting after reasonable efforts have been made and documented, the local educational agency may, after a 30-day period, request that OAH dismiss the complaint. (34 C.F.R § 300.510(b)(4).) More than thirty days passed between the filing of Student's amended complaint and Citrus Springs' motion to dismiss.

Both parties assign blame to the other for the failure of the resolution conference to take place. Because Citrus Springs is primarily homeschooling and center-based, it does not have a location close to Parent. Parent was unwilling to travel from her home in Fountain Valley to Citrus Springs' location in Santa Ana for the resolution conference, and Citrus Springs had not obtained an acceptable site local to Parent.

In discussion at the prehearing conference Citrus Springs offered to secure a place local to Parent for the resolution conference which did not have the intrusive security screening to which Parent had earlier objected. Parent stated that she would be willing to travel locally to such a site and attend the resolution conference. The parties agreed that they would undertake good faith efforts to set up, schedule, and attend such a meeting.

Therefore, Citrus Springs' motion to dismiss Student's amended complaint for failure is deemed withdrawn without prejudice to refiling. Because of the stated difficulty in scheduling the resolution session because of the Student's family's need to reschedule therapy sessions and Citrus Springs' need to secure the attendance of and transport its required staff, the parties are given until **March 29, 2019**, to hold the resolution session.

All dates in this matter are vacated and continued for good cause and the matter shall be set as follows:

Continuation of Telephonic PHC: March 29, 2019 at 3:00 p.m. The prehearing conference will be initiated by an administrative law judge. The parties need not refile their prehearing conference statements.

Due Process Hearing: April 9-11, 2019, at 9:30 a.m. the first day and at 9:00 a.m. all following days, and continuing day to day, Tuesday through Thursday, as needed at the discretion of the ALJ.

2. <u>All other PHC matters</u> shall be addressed at the continued PHC.

3. 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 OAH AT** https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb**.**

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.

4. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: March 11, 2019

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings