

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

OAH CASE NO. 2014030842

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014030046

ORDER DENYING MOTION TO
CHANGE VENUE OF DUE PROCESS
HEARING

Spencer Valley Elementary School District (District) filed a Request for Due Process Hearing (complaint) on March 3, 2014, naming Student. On March 21, 2014 Student filed a complaint naming District. The Office of Administrative Hearings (OAH) granted Student's unopposed motion to consolidate the two cases by order dated March 27, 2014, vacating all dates in District's case. The hearing in the consolidated action is now scheduled for June 4, 2014 at the District's office located at 4414 Highways 78 and 79, Santa Ysabel, California 92070.

On May 2, 2014, Student filed a motion seeking to change the venue of the due process hearing to OAH's San Diego office (Motion). Student contends OAH's office is more convenient because seven of Student's witnesses reside in San Diego, including all of Student's expert witnesses who charge for travel time. While four witnesses live or work in Julian, including Student's parent (Parents), Parents want the hearing at the location most convenient for their primary witnesses and where their costs will be reduced. Student's counsel will be staying at the San Diego County home of Student's special education consultant (Consultant) who will be assisting at the hearing in this matter, including conducting the examination of some witnesses. Student argues that Consultant is hearing impaired and the acoustics in the District's hearing room make it unsuitable for an administrative hearing. Consultant attended the April 2014 mediation at District office and claims to have had difficulty hearing the mediator. Student argues OAH's hearing rooms are better suited for a hearing and its acoustics are better than District's hearing room. Student

contends District personnel will not be unduly burdened traveling to San Diego because school will not be in session during the hearing.

On May 7, 2014, District filed its Opposition. District contends the hearing should be held at its office in Santa Ysabel which is less than one mile from Parents' home and where Student attends school. OAH is about 54 miles from Parents' home and District's office. In the alternative, District requests that OAH defer ruling on the issue until the Prehearing Conference (PHC) after evidence and witness lists have been exchanged and possibility of telephonic testimony has been discussed. District argues its office is reasonably convenient to Parents and Student and that OAH must balance the interests of all parties in a manner which allows them to exercise their full hearing rights. Five of Student's witnesses live or work closer to District than OAH's San Diego office. District claims its office is more convenient for nearly all of its witnesses, including six who work or reside in the Santa Ysabel/Julian area and two who live nearby. District argues OAH already determined that for purposes of the mediation, convenience of Student's representatives and the cost of travel time failed to establish District office is not reasonably convenient to Student or Parents. District maintains it is prepared to use an amplification system and/or make other appropriate accommodations to address Consultant's hearing difficulties.

On May 9, 2014, Student filed his reply. Student contends District office was built in 1876 and is nothing like the professional setting at OAH. OAH is air-conditioned with integrated electrical outlets for computers, padded seats and better acoustics. Student further argues that the law decidedly favors the location requested by parents and that the standard for determining the hearing venue is the reasonable convenience of Parents and Student. Student claims District has made no effort to show prejudice if the hearing is moved to OAH and that the equities weigh in Parents' favor. Holding the hearing at District is prejudicial to Parents since most of Student's witnesses are located in San Diego and Parents have the added burden of paying expert travel fees. Student claims his witnesses will be significantly inconvenienced by the 3 to 4 hour commute between San Diego and Santa Ysabel. A hearing at District gives it an unfair advantage because District will have the only access to equipment, technology, and printers. Student claims District's offer of amplification is insufficient because the quality and scope of such system is unknown. Student contends a ruling should be made now rather than at the PHC because Student must serve subpoenas on witnesses. If OAH is inclined to deny the Motion, Student proposes the hearing be scheduled at District for the first two days and the remaining six days at OAH in San Diego.

APPLICABLE LAW AND DISCUSSION

The IDEA and the Education Code require that due process hearings be conducted "at a time and place reasonably convenient to the parents and child involved." (34 C.F.R. § 300.515, subd. (d); Ed. Code §56505, subd. (b).) "Reasonably convenient" does not mean that the hearing may be located anywhere a parent chooses. To be reasonable, there must be some balance of interest between what is convenient for the parent and child on one side and what is efficient for the district or other parties on the other side. Due process hearings are generally scheduled in the offices of the school district as the pupil generally resides within

the district's coverage area. Due process hearings must be fair and conducted so that the parties can exercise their rights as provided for by law. (Ed. Code § 56505, subd. (c) and (e).)

Here, Student has failed to establish that the District office is not reasonably convenient to Parents and Student. Parents and Student live less than one mile from the District office and about half of the witnesses for both Student and District live in or near the Santa Ysabel/Julian area. In contrast, Student's proposed venue is over 50 miles away from the Santa Ysabel/Julian area, which Student admits would involve a 3 to 4 hour commute for the witnesses residing in the Santa Ysabel/Julian area. It would not be appropriate to require the witnesses to travel the much greater distance to OAH in San Diego because it is more convenient for Student's counsel and his experts. The fact that a location change might be more convenient for Student's representatives or cause them to bill less travel time fails to establish that District's office is not reasonably convenient to Student or Parents. While Student might prefer to hold the hearing in a more modern building than District's office, that is not a legal basis which necessitates a change of venue. The location of the due process hearing is not determinative of whether the due process hearing is conducted fairly. The ALJ hearing the matter in accordance with governing state and federal statutes and regulation is responsible for conducting a fair hearing at any location. District has agreed to provide amplification equipment and to make other reasonable accommodations to address Consultant's hearing difficulties. In addition, OAH has amplification equipment in the form of a headset which Consultant can wear during the hearing at District's office. The ALJ presiding over the PHC can address any other accommodation issues. Based on the evidence presented in support of and opposition to the request for change of venue, the District is the most practical and convenient location to conduct the hearing of this matter. For these reasons, Student's request to change the venue of the hearing to OAH in San Diego is denied.

ORDER

1. Student's request for change of venue to OAH in San Diego is denied.
2. District shall ensure that the hearing room has amplification equipment which is in good working order and has been set up by District in advance of each day of hearing.
3. All other requests for accommodation shall be set forth in the parties' PHC statements which the parties should be prepared to discuss at the PHC.

DATE: May 16, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings