BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. COMMUNITY COLLABORATIVE CHARTER SCHOOL AND ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT	OAH Case No. 2017030467
COMMUNITY COLLABORATIVE CHARTER SCHOOL AND ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017021257 ORDER FOLLOWING PREHEARING CONFERENCE; ORDER GRANTING MOTION TO CONTINUE; ORDER GRANTING MOTION TO CHANGE VENUE; ORDER GRANTING MOTION TO COMPEL OBSERVATION WITHOUT VIDEO RECORDING

On May 8, 2017, a telephonic prehearing conference was held before Administrative Law Judge Vernon Bogy, Office of Administrative Hearings. Peter Attwood, Special Education Advocate, appeared on behalf of Student. Jim Sanft, Attorney at Law, appeared on behalf of District and Charter School (Collectively "District"). The PHC was recorded.

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

1. Student's Motion for Second Continuance. On April 17, 2017, the parties filed a joint request for continuance of the prehearing conference and due process hearing in order to allow Student to retain legal counsel. The request was granted by OAH and the matter set for a prehearing conference on May 8, 2017, and a due process hearing on May 16, 17 and 18, 2017. On May 2, 2017, Student filed a request for a second continuance because counsel initially selected by Parents was ultimately unable to accept the case due to calendar conflicts, and also because Father's grandmother, who resides in Ohio, is in critical condition and not expected to live beyond the week. Father District and Charter did not file an opposition to Student's request for second continuance.

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 substitution of an attorney when the substitution is required in the interests of justice. (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. (See Cal. Rules of Court, rule 3.1332(d).)

Having reviewed the request for good cause and considered all relevant facts and circumstances, the request is granted. All dates are vacated.

2. District's Request to Change Venue. District requested in its prehearing conference statement that the hearing venue be changed to Sage Oak Charter School, 1473 Ford Street, Suite 105, Redlands, California 92373, because the Sage Oak location has larger conference rooms to accommodate the hearing, separate rooms for private attorney-client discussions, and has locking doors on the conference/hearing rooms. The Sage Oak venue is an ADA-compliant facility. Student does not oppose the requested change in venue.

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).) 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.

Good cause appearing, District's request to change venue is granted.

3. District's Motion to Compel Observation without Video Recording

On May 1, 2017, District filed motion to compel observation of Student's special education and related services which he is receiving through private service providers pursuant to a unilateral placement by Parents, without video recording of the observations by Student. On May 2, 2017, Student filed opposition to the motion, asserting that he has the right to video record any such observations. District and Charter argue that video recording of the observations would be intrusive and interfere with the observations, and that District's and Charter's staff who will be observing do not consent to be video recorded.

On January 31, 2017, Parents sent a letter to District and Charter advising that "We have no choice but to provide private educational services [to Student] as well as related services." The services being provided Student include specialized academic instruction, occupational therapy, and speech services. Student has not identified the providers of specialized academic instruction or occupational therapy, other than in his opposition to the motion to compel, where the placement is identified as "parents' own private placement, under their authority and control." In Student's opposition, Kaiser is identified as the

provider of Student's speech services. District's staff who intend to observe Student object to being video recorded during the observations.

In support of its motion to compel observation, District and Charter cite Education Code section 56329, subdivision (d), which provides in pertinent part:

> If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian.

In *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal.App.4th 875, 884, (*Benjamin G.*), the Court construed Education Code section 56329, subdivision (c), as permitting an independent expert to observe a proposed placement not only as part of a parent-funded independent education evaluation, but also as part of an expert's preparation for a due process hearing. *Benjamin G.* also provides for a pre-hearing order to compel a school district to permit the observation. Here, District seeks to observe Student's current placement as part of its preparation for a due process hearing. Student has failed to present any legal argument that overcomes District's right to observe Student in his current private placement. Consequently, District's motion to compel observation is granted.

With respect to Student's stated intent to video record any observations in his private placement, District argues that Education Code section 51512 prohibits video recording in a classroom without prior consent of the school administrator and the class room teacher. Education Code section 51512 provides in pertinent part:

> The Legislature finds that the use by any person, including a pupil, of any electronic listening or recording device in any classroom of the elementary and secondary schools without the prior consent of the teacher and the principal of the school given to promote an educational purpose disrupts and impairs the teaching process and discipline in the elementary and secondary schools, and such use is prohibited. Any person, other than a pupil, who willfully violates this section shall be guilty of a misdemeanor.

Here, Student provided no legal authority for his contention that Parents have the right to videotape District observations in his private placement, nor has Student identified teachers, principals or other staff involved in Student's private placement education services who might have the right to either object or consent to video recording, other than to imply in the opposition to the motion that they are none other than Parents. District, on the other hand, has stated that its observers object to being videotaped during the observations, and that video recording of the observations will be intrusive and disruptive. Accordingly, District's motion to compel observations without video recording is granted.

ORDER

1. Student's motion to continue is granted. This matter will be set as follows:

Prehearing Conference:	May 22, 2017, 10:00 a.m.
Due Process Hearing:	May 30 and 31, 2017, June 1, 2017, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

No further continuances will be granted unless substantial good cause is demonstrated.

2. District's motion to change venue is granted. The hearing will be held at Sage Oak Charter School, 1473 Ford Street, Suite 105, Redlands, California 92373.

3. District's motion to compel observation without video recording is granted.

DATE: May 10, 2017

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Vernon Bogy
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VERNON BOGY
Administrative Law Judge
Office of Administrative Hearings