

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. 2015120889

ORDER GRANTING IN PART AND
DENYING IN PART STUDENT'S
MOTION TO CHANGE HEARING
LOCATION

On Thursday, May 5, 2016, Andrea Marcus, the attorney representing Student, submitted a request to change the location for the due process hearing currently scheduled to begin May 16, 2016 in Tehachapi, to the Office of Administrative Hearings location in Van Nuys. Ms. Marcus predicated her request on her generalized concerns about attending the hearing in Tehachapi, and a recent threat she received by telephone.

On Friday, May 6, 2016, District responded to Ms. Marcus' request. District opposed the request based upon the lack of evidence provided by Ms. Marcus along with the burden on District that would be imposed by the requested location change. District proposed moving the hearing to the Kern County Superintendent's office as an alternative to the Tehachapi location.

On Friday, May 6, 2016, Ms. Marcus replied to District's opposition by providing some additional narrative information regarding her recent interaction with the Mojave police chief. She also expanded the area she would not attend a hearing to include all of Kern County.

On Tuesday, May 10, 2016, an Order was issued denying Student's request without prejudice.

On Tuesday, May 10, 2016, Ms. Marcus resubmitted a motion to change the hearing location from Tehachapi to Van Nuys. She attached her declaration, along with that of Student's parent. The declarations referred to generalized concerns about Ms. Marcus' safety while attending the forthcoming hearing in Tehachapi.

On Wednesday, May 11, 2016, District filed opposition to Student's resubmitted motion. District objected to the lack of factual specificity in Ms. Marcus' declaration, and the lack of any stated factual basis to move the hearing from Tehachapi. District once again identified the Kern County Superintendent of Education offices in Bakersfield as a possible alternative location.

On Wednesday, May 11, 2016, Ms. Marcus filed a reply to District's opposition, and included a further declaration in support of her motion. In her further declaration, Ms. Marcus described in detail a series of encounters with local law enforcement in Tehachapi, including being followed from Starbucks to the Tehachapi District office by a police

cruiser, and then being menaced by that same cruiser in the District's parking lot. Her account supported her contention that the hearing should not be held in Tehachapi because of a hostile environment and potential threats to her safety.

Ms. Marcus' declaration also stated that she cannot enter Kern County, generally, because of her safety concerns about the possible connections between the Tehachapi school district and the Kern County education and law enforcement authorities. Ms. Marcos' also alleged that Kern County is unreasonably dangerous due to corruption and violence within Kern County's law enforcement, and that based upon that alleged circumstance, she is potentially subject to violence in Kern County, generally. Ms. Marcos did concede that the likelihood of violence befalling her in Bakersfield was "very unlikely".

APPLICABLE LAW AND DISCUSSION

Under the Individuals with Disabilities Act (IDEA) 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.

In the declaration that constitutes her reply to District's opposition to her resubmitted request for change of location for the hearing, Ms. Marcus articulates a colorable claim that she is under some potential threat or safety concern in Tehachapi. Such a threat is sufficient to support the conclusion that the hearing should be moved from Tehachapi.

However, there is insufficient justification to support the Van Nuys location as opposed to Bakersfield, based on the safety concerns with Kern County, generally, arising from general statistics about police shootings in Kern County, along with possible connections between the Tehachapi school district and the Kern County education and law enforcement authorities.

The statute provides for the hearing being located at a time and place that is reasonably convenient to the parents and child involved. Student's parents live in Tehachapi. Bakersfield is approximately 40 miles from Tehachapi. Van Nuys is approximately 100 miles from Tehachapi. As such, Bakersfield is more convenient to Student's parents.

The vast majority of witnesses identified by the parties in their prehearing conference statements are from Tehachapi or the surrounding area. The burden on the witnesses, the cost and expense to both sides in arranging witnesses travel outside of the Tehachapi area, and the ability to efficiently administer and conduct the due process hearing all militate for siting the hearing in Bakersfield rather than Van Nuys.

ORDER

The hearing shall be held in Bakersfield at the Kern County Superintendent of Education offices at 1300 17th Street, Bakersfield, California, 93301. District is ordered to provide appropriate hearing facilities, as detailed in the prehearing conference order, at that location.

DATE: May 12, 2016

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings