

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CULVER CITY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011060217
CULVER CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011060075 ORDER REGARDING HEARING SCHEDULING AND GRANTING CHANGE OF VENUE

On June 1, 2011, Culver City Unified School District (District) filed a Request for Due Process Hearing in OAH case number 2011060075, naming Parent on behalf of Student (Student) as respondent. On June 3, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011060217, naming District as respondent. By Order dated June 9, 2011, Student’s case and District’s case were consolidated, and the consolidated matters were ordered to proceed on the schedule established in Student’s Case.

On June 7, 2011, Student filed a document entitled: “Request for Judicial Notice Judge Breen Improper Scheduling in Related Matters of Settlement Enforcement;” “Dismissal is Appropriate;” and “Venue Change.” The “Judicial Notice” portion of the document appears to argue that OAH has improperly scheduled the hearings on District’s Due Process Hearing Request (OAH Case Number 2011060075) and Student’s Due Process Hearing Request (OAH Case Number 2011060217). The portion of the document labeled “Change of Venue” requested that the hearing be held at OAH offices rather than District offices. Buried in the document is also a recitation that Student is unavailable for hearing from June 26, 2011 through July 5, 2011, July 28, 2011, and August 15-29, 2011. The “Dismissal is Appropriate” section appears to reiterate arguments made by Student in a June 6, 2011 Motion to Dismiss. OAH has received no opposition. On June 10, 2011, Student filed a document entitled “Motion to Cancel Mediation and Reset (Advance) Calendar Dates” which, like the June 7, 2011 “Request for Judicial Notice.....” contended that OAH had calendared Student’s Case improperly and requested certain hearing dates that were

convenient to Student's Mother. Neither the June 7, 2011 filing, nor the June 10, 2011 filing stated whether Student had discussed agreeable hearing dates with District.

This Order will address the scheduling issues raised by Student (the allegation of improper scheduling and Student's statement of unavailability in both the June 7, 2011 and June 20, 2011 filings). This Order will also address the request for change of venue in the June 7, 2011 filing. However, to the extent the June 7, 2010 filing reiterated jurisdiction arguments in support of the Motion to Dismiss made in Student's complaint, those arguments are addressed by the separate ruling on the Motion to Dismiss.

Hearing Scheduling

Student contends that OAH did not properly schedule Student's hearing, because the hearing date was so much later than the hearing date set in District's case. Student questions why District's case was calendared 26 days from the date of filing, whereas Student's case was calendared for hearing 56 days from the date of filing. The scheduling was correct. When there is a student-filed request for due process hearing, the timeline for a hearing and decision does not begin to run until the parties have had 30 days to attend a resolution session. The 30-day resolution session period does not apply when the local education agency requests the hearing. (See 20 U.S.C. § 1415(f)(1)(B); Ed. Code, § 56501.5.) The scheduling orders that issued in both cases were legally correct and consistent with the practice in all OAH cases of scheduling the hearing on the 26th day after filing in a district case and the 56th day after filing in a student-filed case. Accordingly, contrary to Student's beliefs, the hearings were properly calendared.

Student also appears to contend that the hearing should be rescheduled around the court appearances of Student's Mother and Student's summer schedule. In essence, Student is asking that the existing dates be vacated and that the following schedule apply: no mediation; a prehearing conference on July 7, 2011; and a hearing on July 11-15, 2011. OAH does not schedule prehearing conferences on Thursdays as requested for July 7, 2011, and does not schedule hearings for Fridays, as requested on July 15, 2011.

Although OAH would not be opposed to rescheduling the hearing to mutually convenient dates and times, as discussed above, some of the dates requested by Student are not available because prehearing conferences and hearings are not scheduled on those days. Student also did not contact District to determine if District will agree to those dates or others. Student's Mother should call District's attorney and attempt to reach agreement to mutually agreed dates. If the parties can agree on hearing dates, they should submit a joint request to OAH. If not, Student's Mother may resubmit her scheduling request as a single document, detailing the efforts made to contact District, District's response, and the dates Student would request for hearing. Trial setting conferences are set only in unusual cases and OAH routinely requires parties to attempt to agree to dates before motions to change the dates will be heard. OAH ALJs also routinely discuss hearing scheduling at mediations if the mediation is unsuccessful. Student's Mother has the option of addressing hearing scheduling at mediation if the parties choose to attend mediation. Accordingly, Student's request to

reschedule the hearing is denied at this time, without prejudice to Student filing it again after attempting to reach agreement with District.

Hearing Venue

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).) Due process hearings are generally scheduled at either the school district office, the office of the Special Education Local Plan Area to which the District belongs, or a regional office of OAH.

Here, OAH offices are reasonably convenient for the parent and are an appropriate hearing location. No opposition was received from District. Accordingly, the motion to change the hearing location to the OAH office is granted. Therefore the hearing, as well as any prehearing mediation, will be held at the OAH offices located at 320 West Fourth Street, Suite 630 Los Angeles, CA, 90013.

ORDER

1. The hearing in the consolidated matters will proceed as scheduled.
2. Student may file a “Motion for a Continuance” or “Motion to Reschedule Hearing” after contacting District to attempt to obtain mutually agreed hearing dates. If District does not agree to dates, Student should include an explanation of the efforts made to get agreement from District, the need for the change of dates, and the proposed dates for the prehearing conference and hearing. Any request should bear in mind that OAH only schedules prehearing conferences on Monday or Wednesday at 10:00 a.m. or 1:30 p.m., and does not schedule hearings on Fridays. If Student files such a motion, it should be limited to the question of hearing dates, and not argue any other matters.
3. Any mediation or hearing in this matter (excluding the prehearing conference, which is telephonic) shall take place at OAH, 320 West Fourth Street, suite 630, Los Angeles, California, 90013.

Dated: June 13, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge (acting)
Office of Administrative Hearings