

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011040670

ORDER GRANTING STUDENT'S  
REQUEST FOR TELEPHONIC  
TESTIMONY

On August 19, 2011, Student filed a request for an order permitting the telephonic testimony of Student's mother (Mother) at the due process hearing scheduled for August 23, 2011. Student bases his request on the grounds that Mother has been the sole caregiver of Student's grandmother, who resides in Northern California and who recently suffered a broken ankle and a broken arm. Mother will not be able to attend the hearing in person, as she has no other person who can care for Student's grandmother while she attends the hearing in Southern California.

On August 22, 2011, counsel for the Saddleback Valley Unified School District, Epiphany Owen, advised the Office of Administrative Hearings (OAH) that District would not be filing an opposition to Student's motion.

APPLICABLE LAW

Special education law in California provides that the parties to special education due process hearings have the right to confront, cross-examine, and compel the attendance of witnesses. (Ed. Code, § 56505, subd. (e)(3). Such hearings "shall not be conducted according to the technical rules of evidence and those related to witnesses....." (Cal. Code Regs., tit. 5, § 3082, subd. (b).) The decision to grant or deny a request for telephonic testimony lies within the discretion of the administrative law judge (ALJ). (Cal. Code Regs., tit. 5, § 3082, subd. (g).) The applicable law does not otherwise delineate the factors to be considered in determining whether to permit or deny telephonic testimony in due process hearings.

Notwithstanding other provisions in the Administrative Procedure Act (Govt. Code § 11440.30), if the ALJ permits testimony by telephone, each participant in the hearing must be afforded an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits. (Cal. Code Regs., tit. 5, § 3082(g).) OAH handles requests for telephonic testimony on a case-by-case basis, including a consideration of

whether the witness may be unavailable to attend the hearing, time and travel issues, the relevance and probative value of the proposed testimony, schedule conflicts, or other factors.

#### DISCUSSION

Given the unavailability of Mother to attend the hearing in person, Mother is permitted to testify by telephone (landline only). Student must provide Mother with a complete set of exhibits binders from all parties, containing all of each party's exhibits, prior to the hearing, and shall coordinate with District to ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings.

IT IS SO ORDERED.

Dated: August 22, 2011

/s/

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CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings