BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VACAVILLE UNIFIED SCHOOL DISTRICT and SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016031019 ORDER ON MOTION FOR TELEPHONIC TESTIMONY AND SETTING ADDITIONAL HEARING DAY

This matter is currently being litigated in a due process hearing before the Office of Administrative Hearings. The hearing has been continued to December 6, 2016, at 9:30 a.m.

On November 14, 2016, Student called Dr. James Earhart to testify as an expert in his case-in-chief. Student's counsel examined Dr. Earhart for approximately three and one-half hours. Vacaville cross-examined Dr. Earhart for almost two hours. Sacramento began its cross-examination of Dr. Earhart, which lasted for about an hour and fifteen minutes, but did not complete its cross-examination before the end of the hearing day. Dr. Earhart was informed at the end of the hearing day that he would be called again to finish his testimony. The parties estimate less than half a day total to complete Dr. Earhart's examination.

On November 14, 2016, at the end of the hearing day, Student made a motion to complete Dr. Earhart's testimony via telephonic testimony to avoid increasing litigation costs. Sacramento opposed the motion because Sacramento would like to finish its cross-examination of Dr. Earhart in person, as was permitted for the other parties.

Sacramento should be provided the same opportunity to examine Dr. Earhart in person as the other parties. While it is true that the ALJ was able to observe Dr. Earhart's cross examination by Sacramento, the ALJ finds that it would be helpful to observe the remainder of Dr. Earhart's testimony in person to allow for consistency in credibility determinations relating to Dr. Earhart's testimony. Additionally, there is no reason to believe Dr. Earhart is unavailable to testify in person on one of the remaining hearing days. The amount of time estimated to complete Dr. Earhart's testimony is reasonable and should have been expected by Student when deciding to call Dr. Earhart to testify as an expert. Accordingly, Student's motion to allow Dr. Earhart to testify telephonically is denied.

Based on representations made by the parties about the estimated time needed to complete examination of all remaining witnesses, an additional hearing day will be added. An additional hearing day is set for **December 14, 2016, at 9:30 a.m.**

IT IS SO ORDERED.

DATE: November 18, 2016

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings