BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022060001

ORDER GRANTING, IN PART, STUDENT'S MOTIONS IN LIMINE

SEPTEMBER 21, 2022

On May 26, 2022, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Irvine Unified School District. On July 6, 2022, OAH granted the Parties' request for continuance, setting a prehearing conference for September 9, 2022 and due process hearing for September 20, 21, and 22, 2022.

On September 6, 2022, Student filed motions in limine requesting a closed hearing, leave to audio record the hearing, and to exclude testifying witnesses from the hearing room during the testimony of other witnesses except for Student's educational rights holder.

On September 8, 2022, OAH granted the Parties' second request for a continuance, scheduling the prehearing conference for October 21, 2022 and the due process hearing for November 1, 2, and 3, 2022.

On September 9, 2022, Irvine filed an opposition to Student's motion in limine excluding certain witnesses.

CLOSED HEARING

Special education hearings are closed to the public unless Student requests the hearing be open to the public. OAH does not require a motion in limine to request an open hearing. The request may be made in writing in a Party's prehearing conference statement or may be made verbally during the prehearing conference.

The hearing is closed to the public. This order does not preclude Student from making a request for an open hearing at the continued prehearing conference.

AUDIO RECORDING

OAH does not require a motion in limine to address an attorney's request to audio record a due process hearing. The request may be made in writing in a party's prehearing conference statement or verbally during the prehearing conference.

Any party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. the OAH recording is the only official recording;

2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;
3. operation of the party's recording mechanism will not be allowed to delay the hearing;
4. a party's recording may not be given, provided or played to a witness, or potential witness;
5. the recording is subject to the same confidentiality as the due process hearing;
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's request to make an audio recording of the hearing is granted. If Irvine wants to record the hearing, the request may be made at the continued prehearing conference and must be made before the hearing.

REQUEST TO EXCLUDE WITNESSES

Student requests that all witnesses, except for their educational rights holder, be excluded from the hearing room during the testimony of other witnesses. Student bases their motion on 5 California Code of Regulations Section 3082, subdivision (c)(3) and Federal Rules of Evidence, Rule 615. Student contends that excluding witnesses from the hearing room during others' testimony prevents shaping testimony by hearing what other witnesses say.

Upon motion of a party, and absent compelling circumstances to the contrary, an ALJ may exclude witnesses from the hearing. (5 Cal. Code of Regs § 3082, subd. (c)(3).)

Due process hearings need not be conducted according to technical rules of evidence and those related to witnesses. (5 Cal. Code of Regs. § 3082, subd. (b); Gov. Code, § 11513, subd. (c).) OAH relies by analogy on relevant portions of the California Evidence Code. California Evidence Code, Section 777, subdivision (a), allows the court to exclude from the courtroom any witness not under examination so that witness cannot hear the testimony of other witnesses. For parties that are not natural persons, such as school districts, an officer or employee designated by the entity's attorney is entitled to be present throughout other witness testimony. (See also, Federal Rules of Evidence, Rule 615, subd. (b).)

Both Evidence Code, Section 777 and Rule 615 recognize that a representative of an entity party has the right, equivalent to that of a natural person party, to be present during courtroom proceedings. Attorneys often require the presence of a party or designee to consult with during the hearing. The party or designee has specialized knowledge of the subject matter involved in the hearing and can aid in the conduct of the litigation like parents aiding their attorneys.

Accordingly, Student's motion is denied as to Irvine's representative, who may attend any or all days of hearing. Student's motion is granted as to all other witnesses, who may only attend hearing while testifying.

ORDER

1. Student's motion in limine for a closed hearing is granted.

2. Student's motion in limine to audio record the hearing is granted.

3. Student's motion in limine to exclude witnesses is granted in part. All witnesses, except Student's educational rights holder and Irvine's

representative, will be excluded from the hearing room during the testimony of other witnesses.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings