BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017120141
v.	ORDER DENYING STUDENT'S MOTION FOR TELEPHONIC TESTIMONY
ETIWANDA SCHOOL DISTRICT.	

On November 30, 2017, Student filed a request for a due process hearing (complaint). The complaint states that Student is represented by Arthur Sloane, Attorney at Law, and James D. Peters. Mr. Peters is not an attorney licensed to practice in California. The complaint was signed by both Mr. Sloane and Mr. Peters.

On December 8, 2017, Student filed a motion asking that OAH allow a witness to testify telephonically at hearing. The motion was signed only by Mr. Peters. On December 11, 2017, Etiwanda School District filed an opposition to the motion because Mr. Peters is not an attorney, and therefore cannot provide Student with representation in this matter.

APPLICABLE LAW

The parties to a due process proceeding have a right to be "accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities." (20 U.S.C. § 1415(h)(1); see also Ed. Code, § 56505, subd. (e)(1).) The right to be represented by an attorney and the right to be accompanied and advised by an individual with special knowledge or training does not mean that attorneys and individuals with special knowledge perform the same function. Attorneys are legally authorized to act on behalf of their clients and to practice law.

On September 18, 2017, the attorney general issued an opinion letter which considered whether the IDEA, the implementing regulations, and/or the California Education Code authorized a party to special education due process proceedings to be represented by a person who was not an active member of the California State Bar. The attorney general's opinion concluded that these laws did not authorize parties to a special education due process hearing to be represented by a person that is not an active member of the California State Bar in due process hearings.

DISCUSSION

Student's motion for telephonic testimony is signed only by Mr. Peters who is not an attorney. It is not signed by Mr. Sloane who is Student's attorney of record in this matter. Because a non-attorney, cannot represent a child in a special education due process matter, the motion is denied.

ORDER

Student's motion for telephonic testimony of a witness is denied.

IT IS SO ORDERED.

DATE: January 5, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings