BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015120889
v.	ORDER DENYING STUDENT'S REQUEST FOR TELEPHONIC TESTIMONY BY WITNESS ROBERT IMANI
TEHACHAPI UNIFIED SCHOOL DISTRICT.	

On Friday, April 29, 2016, the prehearing conference was held in this case. There were no requests for telephonic testimony made by counsel at the prehearing conference. The prehearing conference order provided that any motion made after the prehearing conference be accompanied by a showing of good cause as to why the motion was not made at the prehearing conference.

On Wednesday, May 11, 2016, Student filed with the Office of Administrative Hearings a Motion for Telephonic Testimony for Student's expert Dr. Robert Imani. Student based his request on the inability of Dr. Imani to leave his office to provide testimony at hearing due to his busy patient appointment schedule and that the witness was an essential witness to Student's case. The witness did not appear on Student's witness list accompanying his prehearing conference statement, nor did Student provide any facts supporting good cause for the late filing.

On May 11, 2016, District filed an opposition on the grounds that Student failed to identify good cause for the late filing, and that District would be significantly prejudiced by not being able to cross-examine an essential witness in person.

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).) Whether a witness may appear by telephone is a matter within the discretion of the 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. Within its discretion to manage a hearing, 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.

If the ALJ permits testimony by telephone, each party 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).)

DISCUSSION

Here, Student failed to provide good cause for the late filing of the Motion for Telephonic Testimony as required by the prehearing conference order. As such, absent a showing of good cause, the Motion is denied. Should counsel wish to resubmit the motion supported by declarations attesting to facts supporting good cause for the late filing, it as well as any opposition will be considered in due course.

ORDER

Student's Motion for Telephonic Testimony for Dr. Imani is denied without prejudice.

DATE: May 12, 2016

DocuSigned by:

Ted Mann

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TED MANN
Administrative Law Judge
Office of Administrative Hearings