BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
ORINDA UNION SCHOOL DISTRICT,	OAH Case No. 2018090025
v.	ORDER GRANTING MOTION FOR RECONSIDERATION AND VACATING ORDER PERMITTING TELEPHONIC TESTIMONY BY KATRINA MARTIN
PARENT ON BEHALF OF STUDENT.	

On September 28, 2018, shortly after a prehearing conference in this matter, Student filed a request that Katrina Martin, who resides outside of California, be allowed to testify by telephone at the upcoming hearing. Attached to the request was a sworn proof of service by Student's attorney, M. Lynn Hansen, claiming that the request was served on opposing counsel.

On October 4, 2018, the undersigned issued an order granting the request for telephonic testimony, noting that there had been no response from Orinda.

On October 8, 2018, Orinda filed a motion to reconsider the October 4, 2018 order on the ground that the request was never served on Orinda. On October 9, 2018, Student filed an opposition to the motion to reconsider.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).)

DISCUSSION

It is remarkable that Student's opposition to Orinda's motion to reconsider does not claim that the September 28, 2018 request for telephonic testimony was ever actually served on Orinda. Student's opposition nowhere relies upon -- nor even mentions -- the proof of service attached to the written document from Student filed by OAH on that date. Student thus impliedly concedes that there was a failure of service of the request.

Instead, Student claims that the defectively served request was either superfluous or merely confirmatory, because the ALJ had ordered at the PHC (at which Orinda was present) that Ms. Martin would be allowed to testify by telephone.

That claim is quite inaccurate. The ALJ has reviewed the audio recording of the PHC. That recording shows that the ALJ and the parties discussed the possibility that Ms. Martin might testify by telephone, but Ms. Hansen stated she needed to find out further information; specifically, where Ms. Martin resided. She stated she thought Ms. Martin might live in Maine, but stated, "I'd have to confirm that with her."[1]

At the PHC, the ALJ then observed that it was not clear whether an order for Ms. Martin's testimony by telephone was necessary, and made the following request of Ms. Hansen:

> Please find out whether you need this and what the facts are and make a request for telephonic testimony and send it to [opposing counsel] Ms. Baldassari . . . so that Ms. Baldassari can object . . .

The ALJ then promised to rule promptly on any such request. The order that followed the PHC correctly stated that, as of the date of the order, no request for telephonic testimony had been made or granted. So the alleged ruling on which Student now relies was never made.

The October 4, 2018, order allowing Ms. Martin to testify by telephone was based on the representations made by Ms. Hansen in her September 28, 2018 request for telephonic testimony, which was apparently never served on Orinda notwithstanding the proof of service attached to it. Orinda had no opportunity to object to the request. The October 4, 2018 order was therefore erroneously entered.

Orinda's motion for reconsideration of the October 4, 2018 order allowing Ms. Martin to testify by telephone is GRANTED, and the order of October 4, 2018 is VACATED.

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[1] Student's subsequent request for telephonic testimony shows that Ms. Martin actually lives in Maryland.

SO ORDERED.

DATE: October 10, 2018

DocuSigned by:
Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings