

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019100553

ORDER DENYING IRVINE UNIFIED SCHOOL DISTRICT'S  
OBJECTIONS TO VIDEOCONFERENCE AND/OR TELEPHONIC  
HEARING

APRIL 30, 2020

On April 29, 2020, Irvine Unified School District filed with the Office of Administrative Hearings, referred to as OAH, objections to this matter proceeding by way of videoconference, based upon its inability to prepare adequately for a videoconference hearing and technical issues related to conducting a video versus in person hearing. Student did not file a response.

## APPLICABLE LAW

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include

- the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances;
- substitution of an attorney when the substitution is required in the interests of justice;
- a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or
- another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).)

OAH considers all relevant facts and circumstances, including

- the proximity of the hearing date;
- previous continuances or delays;
- the length of continuance requested;
- the availability of other means to address the problem giving rise to the request;

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- prejudice to a party or witness as a result of a continuance;
- the impact of granting a continuance on other pending hearings;
- whether trial counsel is engaged in another trial;
- whether the parties have stipulated to a continuance;
- whether the interests of justice are served by the continuance or imposing conditions on the continuance; and
- any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

California Code of Regulations, title 5, section 3082, subdivision (g), provides, “Notwithstanding Government Code section 11440.30 of the APA, the hearing officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.” This is the same language that exists in Government Code, section 11440.30, subdivision (a).

California Code of Regulations, title 5, section 3089, expressly provides that Government Code, section 11440.30, subdivision (b), shall not apply to special education due process hearings.

## DISCUSSION

Irvine objects to OAH’s use of videoconference hearings during the Safer at Home restrictions implemented by the State of California and local jurisdictions in response to the COVID-19 pandemic. Specifically, Irvine contends that the processes that OAH

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established do not comport with the due process requirements in Education Code, section 56505, subdivision (e), which governs special education due process hearings. Further, Irvine raises technical concerns why it cannot be prepared to proceed to hearing until the end of Safer at Home restrictions on in person due process hearings.

Regarding Irvine's contention that OAH's requirements for video hearings violate the Administrative Procedures Act, Irvine cites the incorrect provisions of law applicable to special education due process hearings. The California Department of Education is authorized by Education Code, section 56100, subdivision (j), to adopt regulations for special education due process hearings. Pursuant to that authority, the California Department of Education promulgated California Code of Regulations, title 5, section 3089, that exempted specific provisions of the Administrative Procedures Act, including Government Code, section 11440.30, subdivision (b), which limited the use of telephonic or video hearings if a party objected. Further, the California Department of Education explicitly permitted the use of a video or telephonic hearing in California Code of Regulations, title 5, section 3082, subdivision (g).

The procedures created by OAH for video hearings comply with Education Code, section 56505, subdivision (e), and California Code of Regulations, title 5, section 3082, subdivision (g), by creating a system for the parties to upload hearing exhibits to OAH well before the hearing starts, and the ability witnesses to view the electronically uploaded documents if attending the hearing by videoconference. For the witnesses testifying by telephone, the procedures that OAH has had in place for many years for telephonic testimony applies with the parties providing that witness with complete copy of the evidence binders.

Regarding Irvine's concerns about being accompanied and advised by an attorney, and its attorney's ability to accompany and advise Irvine, the OAH procedures permit parties to communicate confidentially through the use of caucus rooms. Also, the parties and their representatives may email or text each other during the hearing so long as this is not disruptive of the hearing process. Finally, nothing prevents the parties from requesting a break so they their attorneys can contact each other to speak outside the presence of the ALJ. Whether Irvine's attorney can see all the participants that Irvine's attorney wishes to see is a personal preference and not a due process requirement as due process does not require perfect hearings. (*Mathews v. Eldridge* (1976) 424 S.Ct. 319, 334-335 [summary of Constitutional analysis applying to administrative hearings.] With the particular limitations imposed on personal contact caused by the COVID-19 pandemic, the Individuals with Disabilities Education Act requirement for speedy hearings and special education hearing requirements in Education Code, section 56505, subdivision (e), OAH balances these competing interests with the videoconference hearing process used and provides due process.

OAH has established new subpoenas to compel the attendance of witnesses to testify via videoconference or telephone, and to produce documents. Limits imposed by collective bargaining agreements regarding school district personnel do not apply to a witness subpoenaed to testify as they are commanded by law to appear to testify by OAH, or face sanctions for failure to appear. Finally, Irvine and its counsel can use electronic docu(ment production to obtain documents from third parties, and raise with the hearing ALJ any particular problems regarding document production.

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None of the Executive Orders from the California Governor has suspended administrative hearings as non-essential. Also, in response to Executive Order N-38-20, that on March 30, 2020 that Chief Justice Tani G. Cantil-Sakauye suspended any rule of court that prevented the use of technology to conduct judicial proceedings to protect the health and safety of all participants.

([https://newsroom.courts.ca.gov/internal\\_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20202/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%203-30-2020.pdf](https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20202/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%203-30-2020.pdf))

Finally, OAH hearings do not constitute a gathering as they do not require a group of people to meet in a single room or prevent the practice of social distancing. Accordingly, Irvine's Objections to Videoconference Hearing is denied.

**IT IS SO ORDERED.**

Peter Paul Castillo  
Presiding Administrative Law Judge  
Office of Administrative Hearings