

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

v.

KERN COUNTY SUPERINTENDENT OF SCHOOLS, KERN HIGH  
SCHOOL DISTRICT AND BLANTON EDUCATION CENTER.

OAH CASE NUMBER 2023030389

ORDER DENYING STUDENT'S REQUEST FOR IN-PERSON  
HEARING

MARCH 22, 2023

On March 9, 2023, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Kern County Superintendent of Schools, Kern High School District, and Blanton Education Center, as respondents. On March 15, 2023, Student filed a motion asking that the hearing, currently scheduled to be conducted via videoconference, be conducted in person. OAH received no responses to the motion from any of the named respondents.

## APPLICABLE LAW

The California Department of Education explicitly permits the use of a video or telephonic hearings in California Code of Regulations, title 5, section 3082, subdivision (g). That regulation 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.”

States have considerable latitude in determining appropriate procedural rules for due process hearings as long as they are not inconsistent with the basic elements of due process hearings, and rights of the parties, as defined by the Individuals with Disabilities Education Act and regulations. (*U.S. Dept. of Education, Off. Of Special Education and Rehabilitation Services, final Regs., Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Analysis of Comments and Changes, com. to §300.511*, 71 Fed. Reg. 46540, 46704 (Aug 14, 2006)[2004 Comments].)

## VENUE DETERMINATION

### SPECIAL EDUCATION HEARINGS MAY BE CONDUCTED VIA VIDEOCONFERENCE OVER THE OBJECTION OF A PARTY

Student asserts that California Rules of Court, Rule 3.672(h)(3)(B) limits OAHs authority to schedule hearings via videoconference unless the parties agree. Student

cites to Rule 3.672(h)(3)(B) which, he asserts, states in part that the court may not require a party to appear through remote technology. Student further asserts that California Rules of Court, Rule 3.672(e)(1)(C) "allows for an opportunity for parties to oppose remote proceedings for evidentiary hearing and trials." Student fails to offer any legal authority establishing that the California Rules of Court govern OAH administrative proceedings.

It is notable that the California Code of Regulations exempts Administrative Law Judges conducting special education hearings from the mandates of Government Code § 11440.30(b). (Cal. Code Regs., tit. 5, §3089.) Thus, Special Education Administrative Law Judges may conduct hearings via videoconference even if a party objects.

## EFFECTIVE ASSISTANCE OF COUNSEL

Student notes his attorney is located in Los Angeles, while Student is located in Kern County. Student argues he has a right to the effective assistance of counsel and the ability to consult with his counsel. Student proposes Blanton Education Center because it has a large conference room with a video screen that would be able to accommodate all participants.

Student offers no reason why his counsel could not travel to a location in Kern County where she could be in the same room with Student and Student's Parent during the hearing. There are no rules that prohibit Student from consulting with his attorney during breaks in the hearing regardless of whether the hearing is in person or conducted via videoconference. Nor would Student be prohibited from seeking a break to consult with counsel, if necessary, while the hearing proceeds.

Student has failed to establish that conducting a hearing via videoconference would deprive him of the opportunity for effective assistance of counsel. Student has also failed to establish that conducting a hearing via videoconference would deprive him of the opportunity to participate in, view exhibits, or hear the entire proceeding if the case was conducted via videoconference.

## REASONABLE ACCOMMODATION REQUEST PROCESS

Student argues that he requires an in-person hearing as an accommodation for his disabilities. Specifically, Student asserts he has a high level of anxiety and “will be able to function much better as a participant and as a witness if his mother and his attorney can be next to him to help ease his stress level.” Student goes on to assert that he is “easily distracted when looking at a computer for long periods of time, and will be able to focus on the solemnity of the official due process hearing proceedings more clearly in-person, in a room with fewer distractions, that is not subject to internet-based disruptions.”

As previously discussed, there is no rule against Student’s attorney being in the same room with Student during the hearing. Student’s argument regarding distractions is unclear as, presumably, when participating in a videoconference he will be in a room with only his Parent and possibly his attorney as opposed to a hearing room with multiple, unfamiliar people. Based on the information provided, a videoconferenced hearing seems to serve Student’s needs, as opposed to creating a barrier. Student has offered no evidence that he is unable to participate in the hearing via videoconference.

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If Student requires reasonable accommodations to participate in the hearing he may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at:

<https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Accommodations-at-OAH>.

Student's request for an in-person hearing is denied.

IT IS SO ORDERED.

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings