

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

MCKINLEYVILLE UNION SCHOOL
DISTRICT, et al.

OAH CASE NO. 2013080004

HUMBOLDT COUNTY OFFICE OF
EDUCATION,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013051098
ORDER GRANTING TELEPHONIC
TESTIMONY OR IN THE
ALTERNATIVE TESTIMONY VIA
SKYPE

On October 21, 2013, Student filed with the Office of Administrative Hearings (OAH) a Motion to Allow Telephonic Testimony or in the Alternative Testimony Via Skype at the due process hearing scheduled to begin on October 28, 2013. Due to geographic distance of witnesses from the hearing set to begin in Eureka, California (San Diego, Florida, Sacramento and Auburn), the resultant hardship for the witnesses to travel to the hearing location, and the cost that Student would incur in funding such travel, Student requests that four of his witnesses, Dr. Jean Stika, Michael Perez or alternate, Lindsey Mehler, and Dr. Deb Guthmann be allowed to testify telephonically or via Skype if there is internet access at the hearing site.¹

On October 22, 2013, McKinleyville Union School District, Humboldt County Office of Education and Northern Humboldt Union High School District (collectively referred to as District) filed an opposition to telephonic testimony specifically as to two of the witnesses, Dr. Stika and Dr. Guthmann. District bases its opposition on the grounds that these are critical witnesses and it will be prejudiced if denied its right to face-to-face confrontation of these witnesses and the ability to observe demeanor.

¹ In his motion, Student interchangeably refers to Dr. Deb. Guthmann as Dr. Duffman. Although the Order Following Prehearing Conference identifies the witness as Dr. Duffman, an acting presiding administrative law judge (ALJ) advised this ALJ that the witness from the California School for the Deaf is Dr. Guthmann.

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).) The decision to grant or deny a request for telephonic testimony lies within the discretion of the administrative law judge (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. If the ALJ permits testimony by telephone, each participant in the hearing 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

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. Given the geographic distance of Student’s four witnesses from the hearing site, Student’s identified witnesses are permitted to testify telephonically or via Skype, provided that Student provides each of the proposed witnesses with a complete set of exhibit binders from all parties, containing all of each party’s exhibits, prior to their testimony. District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No witness will be heard by telephone or via Skype unless all these requirements have been fulfilled. District’s request that a notary public identify the witnesses prior to their telephonic testimony is denied.

ORDER

1. Student’s motion to allow Dr. Stika, Michael Perez or alternate, Lindsey Mehler and Dr. Guthmann to testify telephonically or via Skype is granted. Student shall provide each identified remote witness with a complete exhibit binder from each party, containing all of each party’s exhibits, prior to the hearing.

2. District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

Dated: October 24, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

