BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016100772
v.	ORDER DENYING MOTION TO ALLOW A TELEVISION AND/OR VIDEO CAMERA TO RECORD PROCEEDINGS
ELK GROVE UNIFIED SCHOOL DISTRICT.	

On November 14, 2016, Student filed with the Office of Administrative Hearings a motion to allow Pamela Peters to use a television and/or video camera to record the due process hearing in this matter, pursuant to California Rules of Court, rule 1.150, on the grounds that this case presents issues of community concern. In conjunction with this request, Student filed California Judicial Council form MC-500, entitled "Media Request to Photograph, Record, or Broadcast." On November 14, 2016, Elk Grove Unified School District filed opposition.

APPLICABLE LAW

A parent has a right to open a hearing to the "public" under Education Code section 56501 subdivision (c)(2). Education Code section 56505 subdivision (e) governs the rights of a party during a hearing. Video recording by television or video cameras of special education due process hearings is not a right under either Education Code sections 56501 subdivision (c)(2) or 56505 subdivision (e). However, under California Code of Regulations, title 1, section 1030, subdivision (c), an ALJ has discretion to grant a request by a party or interested person to film, photograph, or record the administrative hearing.

Under Government Code section 11425.20, administrative hearings open to the public, are subject to the authority of the administrative law judge to order closure of the hearing, or make other orders, to ensure fairness, continued protection against revelation of privileged or confidential information, or protect minor witnesses or witnesses with developmental disabilities. An ALJ may also exclude persons whose actions impede the orderly conduct of the hearing, restrict attendance because of the physical limitations of the hearing facility, or take other action to promote due process or the orderly conduct of the hearing. (Tit. 1, Cal. Code Regs., § 1030.)

California Rules of Court, rule 1.150, subsection (e), addresses media coverage of a court proceeding. The rule refers to a request made by the media. "Media" or "media agency" is "any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper,

in-house publication, professional journal, or other news-reporting or news-gathering agency" (Cal. Rules of Court, rule 1.150(b)(2)). The rule lists 19 factors to be considered by the ALJ in exercising discretion, including the effect upon witnesses, confidentiality and privacy rights, the maintenance of orderly conduct, and the type and placement of media personnel and equipment. (Cal. Rules of Court, rule 1.150(e)(3).) Rule 1.150 leaves the decision as to whether to allow such recording in the discretion of the court: "This rule does not create a presumption for or against granting permissions to photographs, record, or broadcast court proceedings."

DISCUSSION

Student argues that the community is very concerned and wants to have an opportunity to observe the proceedings "from the comfort of their homes", consider the facts and testimony and determine whether the entities have acted appropriately. The motion makes a general assertion that the community is interested in the District's conduct and, as such, media should be permitted to record or broadcast the proceedings, citing Rule 1.150.

An informed exercise of discretion requires the ALJ to involve a requesting media agency, as well as the parties, in a thorough discussion of contemplated witnesses, the limitations of the hearing venue, types of equipment, media personnel, security, and the orderly conduct of the proceeding. OAH has not received any request from a media agency. Student's motion does not demonstrate any media agency intends on filming or broadcasting the due process proceeding. Therefore, there are no facts upon which to exercise discretion regarding media coverage. Student's motion does not meet the requirement of California Rules of Court, rule 1.150.

Student's request that the hearing be open to the public does not include unlimited access so that the community may view the hearing from the comfort of their homes. OAH typically does not permit television or video cameras to record due process hearings. The presence of television or video cameras may be intimidating, adversely affect a witness' testimony, and violate the privacy of a witness, so that such recording would be prejudicial. The potential for prejudice in this case is evident by Student's assertion that the "community" of interested parents and other people want to determine whether the entities acted appropriately. To ensure a fair hearing under the circumstances of this case, Student's motion to video or film the hearing is denied.

Accordingly, the motion is DENIED.

DATE: November 18, 2016

DocuSigned by:
Marian H. Tully
5BE88FB487454FC...

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings