BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>OAKLAND UNIFIED SCHOOL DISTRICT. | OAH Case No. 2014071037<br><br>ORDER GRANTING MOTION FOR TELEPHONIC TESTIMONY |

On September 23, 2014, Oakland Unified School District filed with the Office of Administrative Hearings a Motion for Telephonic Testimony for Oakland's expert Dr. Sherry Burke. Oakland bases its request on the grounds that it recently learned that Dr. Burke will be out-of-town from September 25 - 28, 2014, due to prior family commitments and unable to testify in person on September 26, 2014, the final scheduled date for hearing. On September 24, 2014, Student filed an opposition on the grounds that Oakland failed to provide a declaration in support of its motion, failed to identify grounds of significant hardship to the witness, and did not timely file its motion. Oakland filed a reply on September 24, 2014, with an attached declaration from Dr. Burke.

## 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).) Whether a witness may appear by telephone is a matter within the discretion of the 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. Within its discretion to manage a hearing, 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.

If the ALJ permits testimony by telephone, each party 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

On September 11, 2014, the parties agreed to September 26, 2014, as the final day of hearing. At that time, Oakland was unaware that its expert would be in Chico, California, on the final date of hearing, a distance in excess of 150 miles from the hearing site in Oakland, California. Oakland learned of the unavailability of its expert on September 18, 2014. In his opposition, Student does not identify any prejudice he would suffer if Dr. Burke were allowed to testify by telephone. The circumstances support allowing Oakland's expert to testify by telephone. In the interests of timely completing this hearing, and finding no prejudice to Student, Oakland's motion to allow Dr. Burke to testify telephonically is granted.

## ORDER

Oakland's motion to allow Dr. Burke to testify telephonically is granted. Oakland shall ensure that Dr. Burke has a complete exhibit binder from each party, containing all of each party's exhibits, prior to her testimony. OAH will ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

DATE: September 25, 2014

**/s/**

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings