BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080513
v.	ORDER TO COMPLY WITH ORDER FOLLOWING PREHEARING CONFERENCE
ANTIOCH UNIFIED SCHOOL DISTRICT.	

On March 5, 2018, the Office of Administrative Hearings held a prehearing conference. Student and District attended the PHC through their respective counsel.

Student filed a PHC statement, a witness list and an exhibit list on February 28 2018, before the PHC. The exhibit list identified Student's exhibits such that the first exhibit was "A", the second "B" etc. The 27th exhibit was "AA." The last exhibit in the seven page list was designated "ZZZZZ."

On March 7, 2018, OAH issued an Order Following Prehearing Conference, which, among other things, ordered the Parties to use numbers to identify exhibits, placing "the letter 'S' or 'D' in front of the exhibit to designate if it was a Student or District exhibit (for example, 'S-5, S-6, or D-1, D-2')." The PHC Order further stated that any motions made after the PHC must be supported by good cause demonstrating why the motion was not made prior to the PHC. Counsel did not seek relief from the requirement to number exhibits at any time during the PHC or thereafter. The PHC Order states that the failure to comply with the Order may result in the exclusion of evidence or other sanctions.

On March 13 and 15, 2018, Student filed amended exhibit lists. Neither exhibit list complied with the Order Following Prehearing Conference. Both lists used letters rather than numbers to identify exhibits, for example, "A" "B" "C" etc., through "PPPPPP."

LEGAL AUTHORITY

An ALJ has authority to rule on parameters for the exchange of exhibits to be offered in evidence at the hearing and any other matter as shall promote the orderly and prompt conduct of the hearing. (Gov. Code, § 1151.5, subd. (b)(9) and (b)(12).) At hearing, the ALJ may take action to promote due process or the orderly conduct of the hearing. (1 Cal. Code Regs § 1030, subd. (e).)

DISCUSSION AND ORDER

Student was ordered to produce exhibit binders identifying each exhibit with a number, preceded with the letter "S" and failed to do so. Instead, Student's exhibit lists use letters requiring Parties, witnesses, and the ALJ to count the number of letters in order to find the correct exhibit in a binder. This process is likely to create confusion and unnecessarily lengthen the hearing while waiting for counsel, a witness, or the ALJ to state the correct number of letters, hear the correct number of letters, and then locate the correct number of letters in an exhibit binder. Identifying exhibits by letters is also likely to be incomprehensible on the official recording and next to impossible to transcribe to produce a written transcript of the hearing. For example, the letters "B", "C" and "D" especially in multiples may be indistinguishable. The ALJ is ultimately responsible for securing an orderly hearing and a clear record. Student's non-compliant identification of Student's exhibits is confounding, confusing and unworkable.

Accordingly, counsel for Student is ordered as follows:

1. Provide a binder for the ALJ and for the witness at hearing in which Student's Exhibits are tabbed and numbered as ordered in paragraph 3 of the March 7, 2018 Order Following Prehearing Conference.

2. Meet and confer with District to coordinate the exchange of improperly identified exhibits with exhibit binders that comply with in paragraph 3 of the March 7, 2018 Order Following Prehearing Conference such that this exchange does not delay the start of the hearing.

3. Provide an index to District and the ALJ, which cross-references the documents listed on Student's Amended Evidence List filed March 15, 2018, with exhibit numbers as ordered in paragraph 3 of the March 7, 2018 Order Following Prehearing Conference..

4. Failure to comply with this order may result in the exclusion of evidence that does not comply with this Order or other sanctions.

IT IS SO ORDERED.

DATE: March 16, 2018

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings