BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. DEL MAR UNION SCHOOL DISTRICT,	OAH Case No. 2018020023
DEL MAR UNION SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2018070786 ORDER SUSTAINING STUDENT'S OBJECTION TO ADMISSION OF DEL MAR'S EXHIBIT 106

On September 13, 2018, on the eighth day of hearing in this matter, Del Mar Union School District presented the testimony of school psychologist Raz Gibson. Ms. Gibson assessed Student during the spring 2018 school year at Sandhill, a residential treatment center located in New Mexico, where Parents privately placed Student. During the time Ms. Gibson was at Sandhill, she videotaped two short portions of an incident in which Sandhill staff restrained Student in a hold. The undersigned administrative law judge permitted Del Mar to show the videos during Ms. Gibson's testimony. The videos corroborated her description of the restraint. However, the videos capture only approximately two minutes of a restraint incident that lasted some 45 minutes according to Ms. Gibson and the Sandhill incident report generated by Sandhill staff after the restraint occurred.

Del Mar sought to move the video clips into evidence as Del Mar's exhibit 106, which is a flash drive containing copies of the two video clips. Student objected to the admission on the grounds that the video clips are cumulative to Ms. Gibson's testimony and cumulative to the testimony of other Del Mar staff who also testified as to restraint holds witnessed at Sandhill. Additionally, Student objected to the admission of the video clips because they only captured a short portion of the entire restraint. Although the ALJ initially sustained the objective, she agreed to permit the parties to brief the issue. The parties timely filed their briefs.

Del Mar argues that the video clips should be admitted because they are not cumulative, will not cause the ALJ to use an undue amount of time to view them, and because the video clips are the type of evidence that "responsible persons rely on in the

conduct of serious affairs," citing to *Rodriguez v. City of Chula Vista Civil Service Commission* (Cal.App. 4th 2012) 2012 WL 3139753. Student responds that ALJ time will unduly be consumed in reviewing the videos, that the cases on which Del Mar relies are not published[1] and are, in any case, inapposite to special education matters, that the video clips are cumulative, and that their failure to capture the entire incident makes them more prejudicial than probative.

The amount of time necessitated to view the videos is not a particularly compelling issue in this case. The clips only amount to approximately two minutes, and the ALJ has already viewed them. Del Mar is also correct that "responsible persons" would rely on videos unless it was shown that the videos did not accurately reflect what happened or had been tampered with, neither of which is alleged in this case.

The primary issue here is whether it is more prejudicial than probative (Evid. Code § 352) to permit two, one-minute clips of a 45-minute incident into evidence, particularly when that evidence is cumulative to testimony and an incident report, both of which are already in evidence. Although the Evidence Code is not specifically applicable to due process proceedings per California Code of Regulations, title 5, section 3082, subdivision (b), the Evidence Code is instructive in determining whether the video clips should be admitted. Here, there is evidence in the form of Ms. Gibson's testimony and the testimony of another Del Mar assessor regarding restraint holds they witnessed applied to Student at Sandhill. Additionally, the Sandhill incident reports of the restraint hold at issue, as well as the others applied to Student, are also in evidence. The video clips are therefore cumulative evidence.

The videos only account for two minutes of a restraint hold that lasted 45 minutes, so there are 43 minutes of the incident missing. The prejudicial nature of admitting a partial video of an incident therefore outweighs its probative value, particularly given the cumulative nature of the evidence. For these reasons, Student's objection to Del Mar's exhibit 106 is sustained.

IT IS SO ORDERED.

DATE: September 24, 2018

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Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[1] Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115.