BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017110316
v.	ORDER SUSTAINING KERN COUNTY'S OBJECTIONS TO SEPTEMBER 13, 2017 IEP MEETING TRANSCRIPT/RECORDING (EXHIBIT 28)
KERN COUNTY SUPERINTENDENT OF SCHOOLS.	

On February 13, 2018, in the late afternoon of the first day of hearing, Student's counsel informed the ALJ she intended to offer rebuttal evidence in the form of a recording and transcript of an individualized education program team meeting on September 13, 2017. According to Student's counsel, the evidence would rebut testimony by two of Kern County's witnesses regarding statements they made at that IEP meeting. Kern County objected on multiple grounds, including relevance, lack of foundation, accuracy and prejudice to Kern County for late disclosure. The ALJ ordered Student's counsel to meet and confer after conclusion of the first hearing day regarding District's objections and to be prepared to discuss the proposed rebuttal evidence at the beginning of the next hearing day.

On February 14, 2018, the ALJ marked a compact disc containing the recording of the September 13, 2017 IEP team meeting and the transcript, which had not yet been presented to Kern County's attorney, as Exhibit 28 for identification. The ALJ ordered Student's counsel to provide District's counsel with a copy of the transcript of the recording, after which counsel must meet and confer regarding Kern County's objections to Exhibit 28 including any objections to the accuracy of the transcription. The ALJ also ordered counsel to identify which specific portions of Exhibit 28 each party wanted the ALJ to read, and to address in writing any remaining objections to the admissibility of Exhibit 28. The ALJ ordered Student's counsel to file the transcript and any objections and responses with OAH on February 28, 2018.

On February 28, 2018, Student filed a Request for Admission of Transcript of Rebuttal. The transcript attached to the request is not paginated, appears to exceed 15 pages, includes multiple notations of "unintelligible," and ends at approximately 32 minutes. Also on February 28, 2018, Kern County filed objections on several grounds, including relevance. The ALJ considered Student's request to admit Exhibit 28 and Kern County's objections. The proposed exhibit filed by Student's counsel did not comply with the ALJ's order, because it failed to identify specifically which portion of the transcript she wanted the ALJ to read. Kern County indicated it did not choose to identify any portion of the transcript and did not agree to the complete accuracy or relevance of the transcript.

The IEP offer at issue is the October 10, 2017 IEP. What occurred at the September 13, 2017 IEP was not relevant to the issue of whether Kern County failed to implement the residential funding component of the written IEP offer presented to Father at the October 10, 2017 IEP. The evidence contained in Exhibit 28 was known to Student and not disclosed to Kern County in compliance with Education Code section 56505; a tacit acknowledgement of what happened at the September 13, 2017 IEP was not at issue. Thus, if anything, Exhibit 28 was only relevant to impeach two Kern County witnesses that attended both IEP meetings, by raising an issue as to their veracity as to what occurred on September 13, 2017. However, even for that limited purpose, Student did not comply with the ALJ's order, or demonstrate in any way, that Exhibit 28 was admissible as rebuttal.

Kern County's objections are sustained on the ground of relevance. Exhibit 28, marked for identification only, is not admitted and is included in the administrative record.

IT IS SO ORDERED.

DATE: March 29, 2018

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings