BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
ORINDA UNION SCHOOL DISTRICT,	OAH Case No. 2018090025
v.	ORDER FOLLOWING STATUS CONFERENCE
PARENT ON BEHALF OF STUDENT.	

On November 27, 2018, a telephonic status conference was held before Administrative Law Judge Charles Marson, Office of Administrative Hearings. Geralyn M. Clancy, Attorney at Law, appeared on behalf of Student. Jennifer N. Baldassari, Attorney at Law, appeared on behalf of the Orinda Union School District. The status conference was recorded. This Order memorializes the matters discussed and rulings made.

Gap in Audio Recording

The ALJ convened the conference in response to Student's notice, filed earlier in the day, that a 35- to 40 minute gap exists in OAH's official audio recording of the first day of due process hearing in this matter, October 17, 2018. The ALJ's independent investigation revealed that the gap does exist and that Student has accurately described it.

After discussion, two solutions were ordered. To complete the administrative record, the parties shall compare their recordings of the afternoon of October 17, 2018 hearing day and furnish the better recording of those missing 35- to 40 minutes of proceedings to OAH, which will be added to the administrative record and deemed part of OAH's official recording.

Additionally, to prepare for the hearing scheduled to resume on December 4, 2018, Orinda shall promptly furnish its recording of the missing 35- to 40 minutes to counsel for Student to prepare for hearing.

Telephonic Testimony by Katrina Martin

Student renewed his motion to permit the telephonic testimony of Katrina Martin, who resides on the East Coast. Orinda opposed the motion but the ALJ granted it subject to the conditions set forth in the Order Following Prehearing Conference issued on September 28, 2018; namely, that 1) OAH's recording is the only official recording; 2) the parties' recordings will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; 3) no part of the recordings shall be played to any witness or potential witness while the hearing is proceeding; and 4) operation

of the parties' recording mechanisms will not be allowed to delay the hearing. The parties will attempt to agree upon a time for Ms. Martin's telephonic appearance. The requirements of paragraph 7(b) of the Order Following Prehearing Conference shall apply to Ms. Martin's testimony; namely: "The proponent of any witness appearing by telephone shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings."

New Evidence Binders Produced by Student

Orinda objected to Student's recent delivery to it of additional binders of evidence not disclosed in Student's original binders provided by Student's previous counsel. The ALJ declined to make any ruling on the admissibility of any particular document or category of documents in advance of an attempt to introduce such evidence at hearing. However, the ALJ indicated generally that such evidence, if otherwise admissible, may be admissible during the testimony of a witness who has not yet testified; and may, if otherwise admissible, be admissible for the purpose of legitimate rebuttal. However, the ALJ indicated an intent to exclude such evidence if used for the purpose, or with the effect, of re-opening or re-litigating the first two days of hearing.

DATE: November 28, 2018.

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Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings