BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: RIVERSIDE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013050627
PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRIT.	OAH CASE NO. 2013040291 ORDER DENYING REQUEST TO EXCLUDE EVIDENCE; GRANTING REQUEST FOR CONTINUANCE AND SETTING HRG; DENYING REQUEST TO CHANGE HEARING LOCATION

On June 10, 2013, the Riverside Unified School District (District) filed a motion to prohibit Parent on behalf of Student (Student) from introducing any evidence at hearing (motion). The District's motion is based upon Student failing to timely provide its evidence to the District at least five days before the hearing. In the alternative, the District requests a short continuance. The Student timely opposed the District's motion.

On June 11, 2013, the District filed a request to change the hearing location. This request is based upon the District not having availability at the District's offices during the days presently set for hearing, which are June 12 and 13, 2013.

On June11, 2013, a telephonic status conference was held before Administrative Law Judge (ALJ) Paul H. Kamoroff, Office of Administrative Hearings (OAH). Deborah J. Pepaj, Attorney at Law, appeared on behalf of Student. Jack B. Clarke, Jr., Attorney at Law, appeared on behalf of the District.

APPLICABLE LAW

Education Code section 56505, subdivision (e)(7), requires the parties to a special education dispute to disclose their documents to each other at least five business days prior to the hearing. Education Code section 56505.1, subdivision (f), authorizes the ALJ hearing the case to bar introduction of any documents not disclosed to the other party,

without the consent of the other party, as required by section 56505, subdivision (e)(7). In this case, consistent with that provision, the Order Following Prehearing Conference dated June 5, 2013 (PHC Order), contained an advisement that failure to comply with the order could "result in exclusion of evidence or other sanctions."

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

In the District's motion, it asserts that Student failed to timely serve his exhibits to the District at least five days prior to the due process hearing, as required by the Education Code and as instructed in the PHC Order. Consequently, the District moved to exclude the documents or, in the alternative, for a short continuance so that it has the statutorily provided time frame to review the exhibits prior to the due process hearing. The District does not assert that it will be unduly prejudiced by the admission of Student's evidence, but rather moves to exclude the evidence on procedural grounds.

In his opposition, Student admits that his evidence was provided to the District on June 7, 2013, which was past the required production date of June 5, 2013. Student made a good faith effort to exchange the evidence in a timely manner, however, due to miscommunication with his messenger service, the exhibits were not timely delivered. Student asserts that, prior to producing his evidence, the District was familiar with all but two of the 18 exhibits provided. Student therefore argues that the District is not prejudice by the untimely delivery of his evidence.

Here, Student acted in good faith in his attempt to timely produce his evidence. Consequently, excluding Student's evidence is too harsh a sanction given these facts. However, to avoid any prejudice the District may incur by receiving evidence in an untimely manner, the District's request for a short continuance is granted.

In regard to the hearing location, during the telephonic status conference, the District stated that it would have availability at its District's offices during the week of June 17, 2013. Consequently, the District's request to change the hearing location is denied based upon mootness.

ORDER

1. The District's motion to exclude evidence is denied.

2. The District's request for a continuance is granted. All dates are vacated. This matter will be set as follows:

   Due Process Hearing: June 17, 18 and 19, 2013, and continuing day-by-day thereafter at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on the first day of hearing and at 9:00 a.m. each day thereafter, unless otherwise ordered.

3. The District's request to change the hearing location is denied. The hearing shall take place at the District's offices located at 5700 Arlington Ave., Riverside, CA 92504, unless otherwise ordered.

Dated: June 11, 2013

/s/
PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings