BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT ,	OAH Case No. 2015060412
TORRANCE UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2015030745 ORDER DENYING MOTION TO EXCLUDE DOCUMENTS

On September 9, 2015, Torrance Unified School District filed a motion to exclude Student from presenting "any documents or recordings" at the hearing in this matter. Student filed opposition to the motion on the same day. District filed a reply on September 10, 2015.

APPLICABLE LAW

Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. That requirement is stated within the September 9, 2015, Order Following Prehearing Conference issued in this matter. The Order continues to note that no additions to those listed shall be allowed after that time, absent extraordinary circumstances as determined in the discretion of the administrative law judge. Further, it is noted at the conclusion of the Order that failure to comply with the Order may result in the exclusion of evidence or other sanctions.

DISCUSSION

Student served his exhibit list upon District on September 8, 2015, and served the District the documents on the following day. The hearing is set to begin on September 15, 2015. As a consequence, delivery of the documents took place four business days before the commencement of the hearing. District requests that OAH exclude all of Student's evidence.

Student asserts that the documents were mailed to District on September 8, and therefore delivered late, because the postal service was closed on September 7, 2015.

District contends that this is not excusable error and that it has been prejudiced by the one-day delay in obtaining the documents. District suggests in its Motion that, if the documents are not excluded, the start of the hearing should be delayed by one day.

Exclusion of evidence is a severe sanction, and should be reserved for serious or willful violations. Student's missed deadline appears to be neither. District's proposal to delay the hearing is a fair resolution, but is not workable given the necessary coordination among OAH, counsel, and the witnesses.

District's expressed prejudice largely consists of its lack of time to prepare for the unfamiliar testimony of Student's neurological expert Dr. Simun. The parties have been directed in the September 9, 2015, Order Following Prehearing Conference to meet and confer to settle a witness schedule. Student should not schedule Dr. Simun's testimony on the first day of hearing so as to allow District sufficient preparation time. In addition, this matter may be revisited at the start of the hearing if the parties are not able to reach a suitable accommodation. There is insufficient prejudice to District to justify barring Student from presenting documents in support of her case.

ORDER

The District's motion to exclude evidence is denied.

DATE: September 11, 2015

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings