

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT

OAH CASE NO. 2011110895

ORDER DENYING MOTION TO
DISMISS AND DENYING MOTION
TO PRECLUDE WITNESSES AND
EVIDENCE

On January 11, 2012, the Fresno Unified School District (District) filed a motion entitled: Motion to Dismiss, or in the Alternative, to Preclude Petitioner from Introducing Witness Testimony and Documentary Evidence During the Expedited Due Process Hearing. On January 12, 2012, Student's parent on behalf of Student (Student) filed an opposition to the motion. On January 12, 2012, the District filed a reply.

The District's motion is based on the fact that Student's evidence binder and exhibit list were served on District's counsel's office at 9:30 a.m. on January 10, 2012, instead of by 5:00 p.m. on January 9, 2012, as required by the Prehearing Conference Order issued by OAH and the five-day rule for producing of documents set forth in California and federal special education law. (20 U.S.C. § 1415(f)(2)(A); Ed Code, § 56505, subd. (e).) The District seeks to dismiss Student's case or prevent Student from introducing any witnesses or evidence based on that late production.

Student opposes the motion on the basis that Student's counsel attempted to deliver the exhibit binders and witness list to the District's counsel around 5:00 p.m. on January 9, 2012, but was unable to deliver the documents because the office was closed. She called District's counsel, but got a voice mail message. Student's counsel then sent an email to District's counsel regarding the documents at 5:10 p.m., but did not receive a response. She finally delivered the documents to the office at 9:30 a.m. the next morning.¹

The District cites to no authority authorizing dismissal of a due process case under these circumstances. The District has also failed to make a sufficient showing to warrant exclusion of Student's witnesses or evidence.

¹ According to the District's reply papers, the District's exhibit binder and witness list were served on Student's counsel's office at 4:58 p.m. on January 9, 2012. The District attached declarations to its moving papers of two employees who claimed that they did not see Student's attorney arrive at their office before the doors were locked at 5:02 p.m.

ORDER

The District's motion is denied.

Dated: January 12, 2012

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings