

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011030051

ORDER DENYING MOTION TO  
DISMISS

On March 01, 2011, District filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Student as the respondent. On March 11, 2011, attorney Michael Jewell filed on behalf of Student a motion to dismiss the complaint, alleging the district's failing to serve Student with the complaint. On March 16, 2011, District's counsel filed an opposition to the motion to dismiss. On March 17, 2011, Student filed a reply.

APPLICABLE LAW

20 U.S.C. section 1415 (b)(7) and 34 CFR section 300.508 (a)(1) requires that a public agency have procedures that require a party to provide the other party with a copy of the due process complaint. California Education Code section 56502, subdivision (c)(1) requires the party initiating the due process complaint to provide a copy of the request at the same time as the request is filed with OAH.

DISCUSSION

The District established that it complied with the procedural requirements when it sent a copy of the complaint to the parents by way of certified mail, to the most recent address they provided to the District, on the same day the complaint was filed with OAH. The USPS postal service tracking system showed that the USPS attempted to deliver the certified letter to the parents at their address of record on March 2, 2011, and that a delivery notice was left at the address with instructions to contact the USPS to attempt another delivery. Parents cannot refuse service and then benefit from procedures to dismiss the complaint based on lack of notice of the due process hearing request. The District complied with its notice obligations and the Motion to Dismiss is denied.

ORDER

1. Student's motion to dismiss denied.
2. All previously scheduled dates shall remain on calendar.

IT IS SO ORDERED.

Dated: March 17, 2011

/s/

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings