

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

TAMALPAIS UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2011070322

ORDER DENYING MOTION TO  
DISMISS AND ORDER RESETTING  
45-DAY TIMELINE FOR ISSUANCE  
OF DECISION

On July 8, 2011, Mother, on behalf of Student, who is over the age of 18, filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint) against the Tamalpais Union High School District (District). On July 19, 2011, the District filed a motion to dismiss, asserting that Student did not serve a copy of the complaint on the District. Student did not file a response. On July 27, 2011, OAH issued an order requesting further information by August 2, 2011, from both the District and Student regarding service of the complaint.

On August 1, 2011, the District provided OAH with a declaration to establish that it did not receive a copy of Student's complaint. On August 2, 2011, Mother informed OAH that she served a copy of the complaint.

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. § 1400, et. seq. (IDEA))<sup>1</sup> provides that a party may not have a due process hearing until the notice of a due process hearing request meets the specifications listed in Section 1415(b)(7)(A). (§ 1415(b)(7)(B).) Further, Section 1415(c)(2)(A) requires the party requesting the due process hearing serve a copy of the complaint on the opposing party.

Title 34 Code of Federal Regulations part 300.515, part (a)(1) (2006), and Education Code sections 56502, subdivision (f), and 56505, subdivision (f), require that the hearing be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. Speedy resolution of the due process hearing is mandated by law

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<sup>1</sup> All statutory citations are to title 20 United States Code, unless otherwise noted.

and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

## DISCUSSION

The Declaration provided by the District established that Student did not serve a copy of the complaint on the District. However, Mother represented to OAH that she served by mail a copy of the complaint on August 2, 2011. Therefore, the 45-day timeline, described above, will commence as of the date of this order.

## ORDER

1. The District's motion to dismiss is denied.<sup>2</sup>
2. The 45-day timeline commenced on August 5, 2011 and shall be reset accordingly. All previously scheduled hearing dates are vacated. OAH shall serve the parties with a new scheduling order based on the new timeline.

Dated: August 5, 2011

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> Nothing in this order prevents the District from filing a new motion to dismiss if it did not receive a copy of Student's complaint.