

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011100275

ORDER DENYING MOTION TO
RESET TIMELINES

On October 7, 2011, Student filed and served a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH) naming the Mount Diablo Unified School District (District). OAH sent District a scheduling order on October 11, 2011. On November 3, 2011¹, District filed and served a response to the complaint, which incorporated a request to reset mediation and hearing dates in order to enable the District to “properly prepare for the case prior to the mediation and hearing dates.” The request to reset was supported by a declaration from Mildred Browne, assistant superintendent of pupil services and special education for District. In a letter dated November 18, 2011, District renewed its request to OAH for a ruling on its request to reset timelines. Student did not file a response to the request to reset.

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(c); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).)

Here, District asserts that it did not receive a copy of the complaint until its attorney received a copy on October 26, 2011. However, Student’s complaint is accompanied by a valid proof of service showing that the complaint was properly and timely served by facsimile on District on October 7, 2011. In addition, District acknowledges that it received a Scheduling Order and Notice of Due Process Hearing and Mediation from OAH on October 11, 2011, which put District on notice of the existence of a complaint. District offers no explanation why, upon receipt of the scheduling order from OAH, it waited almost three weeks to request that the timelines be reset in order to give it more time to prepare for mediation and hearing. Under these facts, District has not demonstrated a basis to reset the hearing timelines. If District requires more time for preparation, then it may, following OAH continuance procedures, request a continuance. In general, a continuance will not be granted

¹ The facsimile identification information at the top of District’s response erroneously shows the date of transmission as September 23, 2008 and therefore the proof of service is controlling.

unless the requesting party has first attempted to meet and confer with the other party regarding mutually agreeable dates.

District's request to reset timelines is denied. This Order does not preclude District from requesting a continuance following OAH continuance procedures.

IT IS SO ORDERED.

Dated: November 21, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings