

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH  
SCHOOL DISTRICT.

OAH CASE NO. 2012070653

ORDER DENYING MOTION TO  
DISMISS AND EXTENDING  
PROCEDURAL TIMELINES

On July 23, 2012, Student's Parent filed a due process hearing request with the Office of Administrative Hearings (OAH) on behalf of Student naming District as the Respondent. On July 24, 2012, the Office of Administrative Hearings served the scheduling order on the parties.

On August 7, 2012, attorney Keith Yanov filed on behalf of District a motion to dismiss the case due to Student's parent's failure to serve District with a copy of the complaint. On August 10, 2012, Student's parent filed an opposition to the dismissal. Student's parent did not serve District a copy of the complaint with its opposition. Instead, the opposition referred to a proof of service document signed by Richard Holland.

Education Code section 56502, subdivisions (a) and (c)(1) and (2), state that the party initiating a due process hearing shall provide the respondent with a copy of the complaint at the same time it is filed with OAH. A party may not have a hearing until the notification requirements are met.

Education Code section 56502, subdivision (d)(1) states that the notice requirement are deemed sufficient unless the Administrative Law Judge is notified within 15 days of service of the notice of hearing. Within five days of such notice, the ALJ shall make a determination of on the face of the notice whether the notification requirements are met.

District's motion is supported by three sworn declarations indicating that neither the District, its attorney, nor its SELPA were served with the complaint.

Student's opposition was not supported by sworn declarations. The Student's proof of service document did not establish District was served. It was deficient in numerous ways. The proof of service was not signed under penalty of perjury. It did not identify the date and method of service of the complaint. There was no other corroborating evidence such as a certified receipt or facsimile confirmation. Moreover, three representatives of the District

provided declarations made under penalty of perjury that they had not received a copy of the complaint.

While District established Student did not serve it with the complaint, District has failed to establish that that the complaint should be dismissed. Student shall serve a copy of the complaint on District and its counsel, by certified mail or other method providing proof of service within two business days of the date of this order. Student's complaint will not be considered filed until that time, and the procedural timelines shall be extended accordingly. If District does not receive the complaint as indicated, it may renew its motion to dismiss.

### ORDER

1. District's motion to dismiss is denied.
2. Student's parent is ordered to serve the complaint on District and its counsel within two business days of the date of this order using a method such as certified mail that provides proof that it was sent.
3. All previously scheduled dates are vacated, and the complaint shall be deemed filed on August 16, 2012.
4. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence on August 16, 2012, the date by which Student must serve the complaint. OAH shall issue a new scheduling order using August 16, 2012 as the date of filing. If Student fails to serve the complaint by August 16, 2012, District may renew its motion.

Dated: August 14, 2012

/s/

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings