

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012100483

ORDER DENYING MOTION TO  
DISMISS AND EXTENDING  
PROCEDURAL TIMELINES

On October 9, 2012, Student filed a Request for Due Process Hearing (Complaint) with the Office of Administrative Hearings (OAH) naming the Corona-Norco Unified School District (District).

On October 16, 2012, District filed a motion to dismiss Student's complaint. OAH received no response from Student.

APPLICABLE LAW

Pursuant to Education Code section 56500.2, subdivision (a)(2), the party filing the complaint shall forward a copy of the complaint to the local educational agency or public agency serving the child at the same time the complaint is filed. (20 U.S.C. § 1415(i)(b)(7)(A); (34 C.F.R. § 300.153(d)) Also, California Education Code Section 56502(c)(1) requires that the party initiating the complaint shall provide the other party to the hearing with a copy of the request for hearing at the same time the request is filed.

DISCUSSION

Through its Motion to Dismiss (Motion), supported by sworn declarations of Linda White (District's Director of Special Education) and Howard J. Fulfrost (the attorney for District), District established that Student did not serve his due process complaint dated October 9, 2012 on District or its representative(s). District asserts that it only became aware of the complaint when it received the Scheduling Order in the case from OAH on or about October 12, 2012. Thus, it argues that its due process rights have been prejudiced by Student's failure to timely serve the complaint as it was prevented from: 1) timely responding to the complaint; 2) timely arranging a resolution session; 3) timely evaluating the complaint for sufficiency; and 4) acquiring relevant notice of the issues and proposed resolution in preparation for mediation and/or hearing. District contends that Student's

complaint should be dismissed as a result of Student's failure to serve the complaint on District.

Student did not file a response to District's motion and thus has not disputed any of District's assertion regarding the failure to serve the complaint on District. Further, there is no information establishing that Student has served the complaint on District since the receipt of District's motion to dismiss. Without such service, District does not have adequate notice of the specific allegations being made against it and is unable to prepare a defense.

However, District's motion did not challenge OAH's jurisdiction. Instead, it seeks dismissal based on Student's failure to serve the complaint. Further, District has not argued that the prejudice District may suffer due to Student's failure to serve the complaint could not be remedied in another way, rather than by dismissal alone. Specifically, OAH could direct Student to serve his complaint while resetting all applicable timelines based on the date of service to District. This approach would enable District to then raise any issue regarding the sufficiency of the complaint, and would provide District adequate time to respond to the complaint, arrange for a resolution session, and prepare for mediation and hearing as necessary. Rather than a dismissal of the complaint, OAH believes that allowing Student time to appropriately serve the complaint would ensure that District's legal and procedural rights relating to the complaint are not prejudiced, and preserve Student's ability to move this case forward without prejudice to either party. Accordingly, District's motion to dismiss is denied without prejudice. Student is ordered to serve his complaint on District.

#### ORDER

1. District's motion to dismiss is denied.<sup>1</sup>
2. Student is ordered to serve a copy of the complaint on the District or its legal representative<sup>2</sup> no later than close of business on November 2, 2012.
3. Concurrently with the service of the complaint, Student shall file with OAH the proof of service of the complaint upon District.
4. OAH will issue a new scheduling order setting the hearing dates as if the complaint were filed on November 2, 2012 upon receipt of the proof of service of the complaint.

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<sup>1</sup> District may file a new request for dismissal of Student's complaint if Student fails to comply with this order.

<sup>2</sup> The Name and Address of Record for District's legal representative is: **Howard J. Fulfrost, 6300 Wilshire Boulevard, Suite 1700, Los Angeles, CA 90048.**

5. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence on November 2, 2012, the date by which Student must serve the complaint.
6. If Student fails to timely serve District with a copy of the complaint pursuant to this Order, the District may file another motion to dismiss the matter.
7. All previously set dates are vacated.

IT IS SO ORDERED.

Dated: October 30, 2012

/s/

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Administrative Law Judge  
Office of Administrative Hearings