

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT AND ORANGE COUNTY
HEALTH CARE AGENCY.

OAH CASE NO. 2009070225

ORDER DENYING ORANGE
COUNTY HEALTH CARE AGENCY'S
MOTION TO DISMISS

On July 6, 2009, advocate Jillian Bonnington, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Capistrano Unified School District (District) and Orange County Health Care Agency (OCHCA). On July 7, 2009, attorney Michelle L. Palmer, on behalf of the OCHCA, filed a motion to dismiss Student's complaint, asserting that Student did not serve a copy of the complaint on the OCHCA. On July 14, 2009, OAH issued an order requesting further information from the OCHCA regarding whether it subsequently received Student's complaint. On July 14, 2009, OCHCA responded to OAH's order.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 & 56028.5.)

A party who files an adequate complaint in a dispute under the Individuals with Disabilities in Education Act (IDEA) is generally entitled to a hearing on his claims. (20 U.S.C. § 1415(f)(1)(A); Ed. Code, §§ 56043(s) & 56501(b)(4).)

The party requesting a special education due process hearing is required to provide the opposing party with notice of the complaint by delivering a copy of the complaint. (20 U.S.C. § 1415(b)(7)(A); Ed. Code, § 56502, subd. (c).) Education Code section 56502, subdivision (c), requires that the party filing the request provide the opposing copy with notice of the complaint at the same time that it is filed with OAH.

Dismissal may be an appropriate remedy when a party has not been served a copy of the complaint.

DISCUSSION

Ms. Palmer's declaration states that Ms. Bonnington faxed a copy of the complaint to her on July 7, 2009. The OCHCA submitted a response to Student's complaint on July 14, 2009. Therefore, the OCHCA received a copy of Student's complaint on July 7, 2009, and the OCHCA's motion to dismiss is denied.

ORDER

The OCHCA's motion to dismiss is denied.

Dated: July 28, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings