

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 REQUIRING ADDITIONAL  
INFORMATION REGARDING  
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, asserting that Student did not serve a copy of the complaint on the OCHCA. OAH has received no response from Student to the OCHCA's motion to dismiss.

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 and 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

The OCHCA's motion, supported by the sworn declaration of Manuel Robles, Coordinator of Special Education Services, dated July 7, 2009, indicates that the OCHCA had not received a copy of Student's complaint. The proof of service with Student's complaint states that Ms. Bonnington's office served the complaint on the OCHCA by mail on July 5, 2009, which was a Sunday with no mail service.<sup>1</sup> Therefore, the OCHCA might not have received the complaint on July 7, 2009. Because the OCHCA may have received Student's complaint after it filed the motion to dismiss, OCHCA must inform OAH whether it eventually received a copy of Student's complaint.

## ORDER

The OCHCA shall submit to OAH by 5:00 p.m. on July 17, 2009, additional evidence, by sworn declaration, as to whether it received Student's complaint after it filed the motion to dismiss. OAH will rule on the motion to dismiss thereafter.

Dated: July 14, 2009

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> Ms. Bonnington's office served the complaint at the OCHCA's Post Office box, which is listed on the OCHCA's website. (<http://www.ochealthinfo.com/>) Student served the complaint on the District and OAH by facsimile transmission.