

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HESPERIA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050412

ORDER GRANTING MOTION TO
RESET TIMELINES FOR FAILURE TO
SERVE COMPLAINT

On May 7, 2012, Student filed a Request for Mediation and Due Process Hearing (complaint) naming District as Respondent. OAH served a scheduling order on both parties on May 10, 2012. On May 15, 2012, District filed a motion to vacate the hearing dates on the ground that Student did not serve District with a copy of the complaint. The motion was accompanied by a sworn declaration affirming that the District did not receive a copy of the complaint. Additionally, the complaint filed with OAH was not accompanied by a proof of service on District. Student did not file an opposition to District's motion.

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3) (2006).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3) (2006).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. §300.510(b)(4) (2006).)

Here, because District was not served with the complaint, the matter cannot proceed to hearing until the parties have participated in the resolution session or waived it in writing. As such, District's motion to vacate the previously set dates is granted.

ORDER

1. Student is ordered to serve a copy of the complaint on District not later than close of business on May 24, 2012.
2. All previously set dates are vacated.

3. OAH will serve a new scheduling order on both parties setting the hearing dates as if the complaint were filed on the date of this order.

4. If Student fails to timely serve District with a copy of the complaint pursuant to this Order, District may file a motion to dismiss the matter.

Dated: May 21, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings