

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012061163

ORDER GRANTING MOTION TO
RESET TIMELINES FOR FAILURE TO
SERVE COMPLAINT

On June 27, 2012, Student filed a Request for Mediation and Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Mt. Diablo Unified School District (District). OAH served a scheduling order on both parties on June 28, 2012. On July 20, 2012, the District filed a motion to vacate the hearing dates on the ground that Student did not serve the District with a copy of the complaint.¹ The motion was accompanied by a sworn declaration from Bryan Cassin, the District's Alternative Dispute Resolution Administrator, affirming that the District did not receive a copy of the complaint. Student did not file an opposition to the District's motion.

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. § 1400, et. seq. (IDEA)² provides that a party may not have a due process hearing until the notice of a due process hearing request meets the specifications listed in Section 1415(b)(7)(A). (§ 1415(b)(7)(B).) Further, Section 1415(c)(2)(A) requires the party requesting the due process hearing serve a copy of the complaint on the opposing party.

Title 34 Code of Federal Regulations part 300.515, part (a)(1) (2006), and Education Code sections 56502, subdivision (f), and 56505, subdivision (f), require that the hearing be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. Speedy resolution of the due process hearing is mandated by law

¹ While the District framed its motion as a Notice of Insufficiency, the District's motion is in fact a motion to reset to the timelines due to Student's purported failure to serve a copy of the complaint upon the District.

² All statutory citations are to title 20 United States Code, unless otherwise noted.

and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

DISCUSSION

While the complaint's statement of service indicates that Student's Mother served a copy of the complaint upon the District, the District established that it had not received a copy of the complaint through Mr. Cassin's declaration. 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 the District not later than close of business on August 3, 2012, and concurrently provide OAH with proof of service of the complaint upon the District.
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 August 3, 2012, upon proof of service of the complaint upon the District.
4. If Student fails to timely serve District with a copy of the complaint pursuant to this Order, the District may file a motion to dismiss the matter.

Dated: July 27, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings