

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2012070653

ORDER DENYING MOTION TO
DISMISS AND GRANTING REQUEST
TO RESET TIMELINES

On July 23, 2012, Student's Parent filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH) on behalf of Student naming District as the Respondent. On July 24, 2012, the Office of Administrative Hearings served the scheduling order on the parties. On August 7, 2012, attorney Keith Yanov filed on behalf of District a motion to dismiss the case due to Student's parent's failure to serve District with a copy of the complaint. On August 10, 2012, Student's parent filed an opposition to the dismissal. Student's parent did not serve District a copy of the complaint with its opposition. Instead, the opposition referred to a proof of service document signed by Richard Holland.

On August 15, 2012, OAH served its Order Denying Motion to Dismiss, and extended the procedural timelines and reset the scheduled dates. Student was ordered to serve District with the complaint within two days. District was allowed to renew its motion if Student failed to comply.

By August 20, 2012, Student still had not served District. On August 20, 2012, District renewed its motion on the grounds that Student had not served the complaint.

On August 22, 2012, Student filed an objection to the motion to dismiss. Student claimed she had not been properly served with the order, and was on vacation and was unable to serve the complaint earlier. On August 23, 2012, Student filed an amended objection, claiming she had just served the parties with the complaint.

On August 23, 2012, District filed a reply to Student's objection. It acknowledged that Student had just served it with the complaint. In its reply, District stated it would withdraw its opposition 1) if the timelines would be reset to August 22, 2012, based upon it being served on that date; and 2) if new mediation dates and due process hearing dates would be set based upon August 22, 2012.

Education Code section 56502, subdivisions (a) and (c)(1) and (2), state that the party initiating a due process hearing shall provide the respondent with a copy of the complaint at

the same time it is filed with OAH. A party may not have a hearing until the notification requirements are met.

Education Code section 56502, subdivision (d)(1) states that the notice requirement are deemed sufficient unless the Administrative Law Judge is notified within 15 days of service of the notice of hearing. Within five days of such notice, the ALJ shall make a determination of on the face of the notice whether the notification requirements are met.

District's motion is supported by three sworn declarations indicating that it was finally served with the complaint on August 22, 2012.

Student's complaint will be considered filed as of August 22, 2012, and the procedural timelines shall be extended accordingly.

ORDER

1. District's motion to dismiss is denied.
2. District's request to reset timelines in accordance with the August 22, 2012 service date will be granted.
3. All previously scheduled dates are vacated, and the complaint shall be deemed filed on August 22, 2012.
4. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence on August 22, 2012, the date by which Student must serve the complaint. OAH shall issue a new scheduling order using August 22, 2012 as the date of filing.

Dated: August 24, 2012

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings