

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010061143

ORDER DENYING MOTION TO
DISMISS

On June 24, 2010, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), with the Office of Administrative Hearings (OAH), naming San Francisco Unified School District (District).

On June 30, 2010, District filed a Motion to Dismiss, alleging that Student failed to provide notice to the District of the complaint.

OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act is to “ensure that all children with disabilities have available to them a free appropriate public education.” (20 U.S.C § 1400(d)(1)(A), (B), and (C); Ed. Code, §56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

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

DISCUSSION

Student filed the complaint in the form of a letter to OAH on June 24, 2010. Student did not use the OAH complaint form that directs the filing party to all of the requirements that must be met file a valid complaint. Student provides no proof of service showing that

the District was served with the complaint. District provides evidence by declaration that Student did not serve District with the complaint. District must be served with the complaint. However, in the interest of administrative economy, District's Motion to Dismiss will be denied, provided that Student serves District with the complaint and provides OAH with proof of service on District within the time ordered. If Student fails to provide proof of service to OAH within the time ordered, the complaint will be dismissed.

ORDER

1. District's motion to dismiss is denied.
2. All previously set dates in this matter are vacated.
3. Student shall serve District with the complaint and provide OAH with proof of service on District by 5:00 p.m. on July 21, 2010.
4. The timelines for hearing established pursuant to title 20 United States Code section 1415(f)(1)(B) shall recommence on July 21, 2010, provided proof of service is submitted as required by this order.
5. If proof of service is not submitted by 5:00 p.m. on July 21, 2010, the matter is dismissed.

Dated: July 13, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings