

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LIBERTY UNION HIGH SCHOOL  
DISTRICT; MT. MCKINLEY SCHOOL  
DISTRICT; AND DEPARTMENT OF  
MENTAL HEALTH.

OAH CASE NO. 2010120548

MOTION TO DISMISS

On December 13, 2010, Parent, on behalf of Student, initially filed a Mediation Only Request Form with the Office of Administrative Hearings (OAH) naming Liberty Union High School District (LUSD), Mr. McKinley School District (MMSD), and the Department of Mental Health (DMH) as respondents. Subsequently, on December 13, 2010, Student filed a two page note in which Student notified OAH of his intent to cancel the Mediation Only Request and to instead file a Due Process Hearing Request<sup>1</sup> (complaint). Neither document was served on LUSD.

On January 14, 2011, LUSD filed a Notice of Insufficiency (NOI) as to Student's complaint contending that Student did not serve LUSD with the complaint and LUSD only discovered the complaint on January 10, 2011, when it received a notice of amended scheduling order form OAH.

On January 24, 2011, Administrative Law Judge (ALJ) Stella Owens-Murrell found that Student's complaint was insufficiently pled and allowed Student to file amended complaint not later February 7, 2011.

On February 24, 2011, Student filed an amended complaint again naming LUSD, MMSD and DMH. Again, Student failed to serve LUSD. Student indicated that copies were provided to all parties by facsimile transmission, but failed to sign the statement of service.

---

<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

On March 9, 2011, LUSD filed a motion to dismiss and notice of insufficiency claiming that Student failed to provide LUSD with a copy of the complaint.<sup>2</sup>

#### APPLICABLE LAW

The party filing the complaint shall forward a copy of the complaint to the local educational agency or public agency serving the child at the same time the party files the complaint with the department, in accordance with Section 300.153(d) of title 34 of the Code of Federal Regulations. (Ed. Code §56500.2(a)(2)).

An amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii) and be filed in accordance with any applicable orders from OAH allowing a party to file an amended complaint.

#### DISCUSSION

Here, the January 24, 2011 order by ALJ Owens-Murrell granted Student leave until February 7, 2011, to file an amended complaint. Student's amended complaint was filed on February 24, 2011, 17 days after the date allowed by the January 24, 2011 order. Furthermore, as evidenced by the statement of LUSD and Parent's failure to execute a proper proof of serve, Student failed to serve LUSD with the amended complaint. Accordingly, Student's complaint is dismissed without prejudice. Student may refile the instant amended complaint as a new action with OAH.

#### ORDER

1. Student's complaint is dismissed without prejudice.
2. Student shall be permitted to file a new complaint that shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii). If Student files a new complaint, OAH shall open it as a new case.

---

<sup>2</sup> Because the Motion to Dismiss is granted, OAH need not determine whether the amended complaint is sufficiently pled.

3. If Student files a new complaint he shall serve all parties with copies of the complaint at the same time that he submits the complaint to OAH.

Dated: March 14, 2011

/s/

---

MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings