

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011020929

ORDER DENYING STUDENT'S
MOTION TO DISMISS

On February 24, 2011, the Temecula Valley Unified School District (District) filed a Request for Due Process Hearing (complaint), naming Student as respondent. The proof of service on the complaint indicates that the matter was delivered, via regular U.S. mail, to Student's mother (Mother) on February 24, 2011. On March 3, 2011, Student filed a motion to dismiss, claiming that Mother did not receive service of the complaint. Specifically, Student contends she did not learn of District's complaint until February 28, 2011, when Mother received a scheduling order from OAH. After contacting OAH on February 28, 2011, OAH provided Mother with a courtesy copy of District's complaint on March 1, 2011. Because she did not receive District's complaint on February 24, 2011, as indicated on the proof of service, Student contends she was prejudiced, and District's complaint should, therefore, be dismissed. District filed no opposition.

The party initiating the Request for Due Process Hearing by filing a written request shall provide the other party to the hearing with a copy of the request at the same time the request is filed with the Superintendent (Office of Administrative Hearings) (OAH). (Ed. Code, § 56502, subd. (c)(1).) Correspondence correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. (Evid. Code, § 641.)

In this matter, Student has not persuasively shown that District failed to serve her with its complaint. Student did not indicate that the address listed on District's proof of service was erroneous. In addition, District's proof of service includes a declaration stating that it placed the complaint addressed to Student in a United States mail depository, with postage fully prepaid. Given these factors, it is presumed that Student received the complaint mailed by District. As such, Student's motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: March 09, 2011

/s/

CARLA L GARRETT
Administrative Law Judge
Office of Administrative Hearings