

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011031210

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

ORDER DENYING MOTION TO DISMISS,
ORDERING SERVICE OF DUE PROCESS
COMPLAINT, VACATING ALL DATES
AND RESETTING TIMELINES

On March 17, 2011, Parent filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) on behalf of Student, naming the West Contra Costa Unified School District (District).

On April 14, 2011, the District, represented by Jennifer Rowe, Attorney at Law, filed a motion to dismiss the complaint, alleging that Student failed to serve the District with the complaint as required by law. The motion was served by mail on Parent and Rosalie E. Toren, the advocate for Student (Advocate).

On April 15, 2011, through the Advocate, Student filed a response to District's motion to Dismiss.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Improvement Act (IDEA 2004) (20 U.S.C. 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE). (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 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)).

DISCUSSION

Student filed his Request for Due Process Hearing using the OAH complaint form. The complaint form contains a section entitled "Statement of Service," requiring the party requesting a hearing to indicate by checking boxes whether he or she provided a copy of the complaint to the other named parties and OAH. Based on the form, the service options include the following: first class mail, facsimile transmission, messenger service, or personal delivery. The Advocate, who signed the Statement of Service section of the complaint form, checked the facsimile transmission box, and indicated that she served a copy of the complaint on all of the named parties.

Through its motion to dismiss, District has indicated that it did not, and has not received a copy of the complaint to date. District's motion includes representations from its attorney that the District has no record of receiving a copy of the complaint from Student

Student has not filed any response to assert that Parent duly served the complaint on District. In fact, in his response, Student made no assertion at all that indicated that the complaint was served on District, but rather stated that a letter was sent to the District on March 1, 2011, a date that was prior to the filing of the complaint with OAH. Student did not attach a proof of service or other evidence showing that a facsimile transmission was sent to, or received by District, or that the District was otherwise served. Thus, no evidence has been offered to show that District was provided with a copy of the complaint dated March 17, 2011.

Accordingly, the District has made a sufficient showing that it was not provided with due process notice in this case. Parent shall ensure that all named parties are duly served with the complaint.

ORDER

1. District motion to dismiss Student's complaint is denied without prejudice.
2. Within five business days of the receipt of this order, Student is ordered to serve the complaint dated March 17, 2011 on District. A copy of the proof of service shall be provided to OAH.
3. All previously set dates in this matter are vacated. OAH will issue a new scheduling order upon the receipt of the proof of service of the complaint.
4. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence on the date that OAH receives the proof of service of the complaint from Parent.

5. A status conference shall be set for May 4, 2011, at 2:00 p.m., which shall be vacated if OAH receives the proof of service from Student.
6. Failure to comply with this order may result in the dismissal of Student's complaint or other sanctions.

IT IS SO ORDERED.

Dated: April 19, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings