

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL  
DISTRICTS.

OAH CASE NO. 2012051034

ORDER DENYING MOTION TO  
DISMISS

On May 22, 2012, Parent filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) on behalf of Student, naming the Twin Rivers Unified School District (District).

OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation on May 24, 2012. On June 1, 2012, District filed a Notice of Representation. On June 4, 2012, OAH mailed a copy of Student's complaint to District's attorneys. On June 5, 2012, District filed a Motion to Dismiss the complaint, alleging Student failed to serve District with notice of the complaint as required by law. District's motion was served on Parent by mail.

To date, Student has not filed a response to this motion.

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 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, § 56501.5, subd. (c).) The OAH complaint form contains a section entitled "Statement of Service" for the party requesting a hearing to indicate by checking boxes whether he or she provided a copy of the complaint to the other named party and OAH by first class mail, facsimile transmission, messenger service, or personal delivery, and to sign the statement. Dismissal may be an appropriate remedy when a party has not been served a copy of the complaint.

## DISCUSSION

In the present matter, Parent filed an OAH form Request for Mediation and Due Process Hearing. However, the Statement of Service section of the OAH complaint form is not included or attached to the complaint filed with OAH. District's motion includes representations from its attorney and a declaration from District's Director of Special Education, that the District did not receive a copy of the complaint from Student on the date it was filed with OAH. However, at the request of District's attorney, OAH provided District with a copy of the complaint on June 4, 2012, the same day District's attorney appeared in the matter by filing a Notice of Representation. No prejudice is alleged, and none is apparent, by the fact District received a copy of the complaint from OAH instead of from Student.

Based on the foregoing, District's motion to dismiss is denied. Student's complaint will be deemed to have been filed on June 4, 2012, the date District received a copy of the complaint from OAH. All dates set forth in the Scheduling Order of May 24, 2012 will be vacated and a new Scheduling Order will issue based upon a filing date of June 4, 2012.

## ORDER

1. District's Motion to Dismiss is denied.
2. All dates, including dates set for mediation, prehearing conference and hearing, previously scheduled in this matter are vacated.
3. A Scheduling Order based upon a filing date of June 4, 2012, will be issued.

Dated: June 13, 2012

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings