

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012101010

ORDER DENYING PARENT'S
REQUEST TO DISMISS

On October 25, 2012, the San Ramon Valley Unified School District (District) filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Parent on behalf of Student. On November 5, 2012, Parent filed a letter requesting that District's complaint be dismissed because District did not serve a copy of its complaint on Parent.

District did not file opposition to the request, but did file a proof of service of the complaint on Parent by overnight mail, dated November 5, 2012.

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. § 1400, et. seq. (IDEA)¹ provides that a party may not have a due process hearing until the notice of a due process hearing request meets the specifications listed in Section 1415(b)(7)(A). (§ 1415(b)(7)(B).) Further, Section 1415(c)(2)(A) requires the party requesting the due process hearing serve a copy of the complaint on the opposing party.

Title 34 Code of Federal Regulations part 300.515, part (a)(1) (2006), and Education Code sections 56502, subdivision (f), and 56505, subdivision (f), require that the hearing be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. Speedy resolution of the due process hearing is mandated by law and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

DISCUSSION

The proof of service attached to the complaint indicates that the District served its complaint on an attorney who had represented Student in another matter between the parties,

¹ All statutory citations are to title 20 United States Code, unless otherwise noted.

but did not serve a copy on Parent. While this attorney represented Student in the other matter, she is not presently representing him in the District filed case. Therefore, the District should have also served a copy upon Parent to ensure that Parent and Student were aware of the issues for hearing in District's case, but District did not do so until November 5, 2012. Accordingly, while the complaint is not dismissed, the procedural timelines will be reset and calculated on Parent's receipt of a copy of the District's complaint on November 5, 2012.

ORDER

1. Parent's request to dismiss for failure to serve Parent is denied
2. All previously scheduled dates are vacated.
3. OAH shall issue a new scheduling order that uses November 5, 2012, the date the complaint was served on Parent, as the filing date.

Dated: November 09, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings