

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SWEETWATER UNION HIGH SCHOOL
DISTRICT,

v.

STUDENT.

OAH CASE NO. 2012101142

ORDER RESETTING PROCEDURAL
TIMELINES

On October 29, 2012, the Sweetwater Union High School District (District) filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Student.¹ On November 8, 2012, attorney Araceli Martinez filed on behalf of Student a motion to dismiss because the District did not serve a copy of its complaint on Student.² The District did not submit a response.

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. § 1400, et. seq. (IDEA)³ 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

¹ Student is 18 years old.

² Ms. Martinez also filed a Notice of Insufficiency and motion to dismiss due to collateral estoppel. Because the District did not serve a copy of the complaint on Student, these motions are moot.

³ All statutory citations are to title 20 United States Code, unless otherwise noted.

and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

DISCUSSION

The District served its complaint on Ms. Martinez, who represents Student in another matter between the parties, OAH Case No. 2012050894, but did not serve a copy on Student. While Ms. Martinez represents 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 Student to ensure that he is aware of the District's issues for hearing in its case. Accordingly, the District shall serve a copy of its complaint on Student and the procedural timelines will be reset when Student receives a copy of the District's complaint.

ORDER

1. Student's motion to dismiss for failure to serve Student is denied.
2. Within five business days of this order, the District shall serve a copy of its complaint on Student, and provide a copy of the proof of service to OAH.
3. All previously scheduled dates are vacated. Upon receipt of the District's proof of service on Student, the procedural timelines will be reset as of that date and OAH shall issue a new scheduling order.
4. If the District fails to serve a copy of its complaint on Student within five business days of this order, OAH shall dismiss its complaint and close this case.

Dated: November 8, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings