BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>SAN DIEGUITO UNION HIGH SCHOOL DISTRICT,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2013080189<br><br>ORDER FOLLOWING PRE-HEARING CONFERENCE OF AUGUST 26, 2013; ORDER GRANTING IN PART AND DENYING IN PART STUDENT'S MOTION TO DISMISS; ORDER RESETTING TIMELINES |

The San Dieguito Union High School District (District) filed a Request for Mediation and Due Process Hearing (complaint) on August 5, 2013, naming Student as respondent. Its proof of service indicates that it served the complaint on Student by overnight mail on that date to Student's home address. The Office of Administrative Hearings (OAH) served a Scheduling Order on both parties on August 9, 2013. OAH served Student at his family's post office box.

OAH scheduled the prehearing conference (PHC) in this case for August 26, 2013. Just prior to the scheduled time of the PHC, Student filed a motion to dismiss the District's complaint. Student contended that he and his mother, who represents him, had not received service of the District's complaint.

On August 26, 2013, Administrative Law Judge (ALJ) Darrell Lepkowsky convened the prehearing conference. Justin R. Shinnefield, Attorney at Law, appeared on behalf of the District. Student's mother appeared on behalf of Student. The ALJ recorded the PHC.[1]

Student reiterated his motion to dismiss. He contended that the District was aware that his family was on vacation when the District served its complaint. Therefore, no one was in residence to receive the overnight delivery of the complaint. Student stated that he never received a copy of it and was not aware of the complaint until receipt of the Scheduling Order. Student stated that the District was aware that his family maintained a post office box to receive mail and that the District therefore should have served him there rather than by overnight delivery to his physical home address.

[1] The PHC was originally scheduled to begin at 1:00 p.m. Due to a misunderstanding at Mr. Shinnefield's office, the person who had the alternative phone number at which to reach him for the PHC was not available when the ALJ made the PHC telephone call. The ALJ therefore trailed the PHC until 3:00 p.m. at which time all parties appeared.

The District orally responded to and opposed Student's motion. The District stated it had properly served Student with its complaint by overnight mail, as indicated in its proof of service. The District also stated that it had attempted in previous matters to serve Student at his post office box but that no overnight mail could be delivered there. However, the District also stated that if Student was requesting a continuance, it would not oppose one.

The evidence shows that the District properly served Student with its complaint. However, the evidence, through Mother's statements at oral argument, indicates that Student did not receive the complaint. Based upon discussion with the parties, the ALJ rules as follows:

1. The District is directed to re-serve its complaint on Student at his post office box and at his home address no later than close of business on August 30, 2013.

2. The District shall file a proof of service with OAH the same date it serves Student, indicating that it has served Student as detailed in paragraph one above.

3. OAH will serve a new scheduling order on both parties setting new timelines for this matter based upon the District's filing of its proof of service. The timelines for hearing in this matter therefore shall be set based upon the District's new service of its complaint.

4. All presently scheduled dates in this case are vacated.

5. In all other respects, Student's motion to dismiss is denied.

IT IS SO ORDERED.

Dated: August 26, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings