BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: TUSTIN UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013040960 ORDER DENYING MOTION TO DISMISS

On April 23, 2013, the Tustin Unified School District (District), through counsel, filed with the Office of Administrative Hearings (OAH) a Complaint for Due Process Hearing (Complaint) that named Student.

Based on the record, the District served the Complaint upon an attorney who has represented Student in past matters, but not upon Student's parents directly. On April 29, 2013, Parents, on behalf of Student (Student), requested that OAH reset the timelines in the case because they had received the complaint six days after the date the complaint was filed with OAH. On May 2, 2013, OAH granted Student's request to reset the timelines. OAH issued a new scheduling order setting new mediation, prehearing and due process hearing dates on May 6, 2013.

On May 7, 2013, Student filed a motion to dismiss District's complaint (motion) based on District's failure to timely serve the complaint on them. District filed an opposition to the motion on May 38 2013.

APPLICABLE LAW

Pursuant to Education Code section 56500.2, subdivision (a)(2), 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 complaint is filed. (20 U.S.C. § 1415(i)(b)(7)(A); (34 C.F.R. § 300.153(d).) Also, California Education Code Section 56502(c)(1) requires that the party initiating the complaint shall provide the other party to the hearing with a copy of the request for hearing at the same time the request is filed.

DISCUSSION

In her motion, Student contends that District's complaint should be dismissed because District failed to timely serve the complaint on her parents. Student explains that because she received the complaint from her prior attorney six days after the date of filing of the compliant with OAH, the complaint was not served on them at the same time the complaint

was filed as required by law. Therefore, Student argues that the complaint should be dismissed.

Student's motion does not challenge OAH's jurisdiction, but instead seeks a dismissal based on District's failure to timely serve the complaint. OAH is not persuaded by Student's argument, and the motion to dismiss is denied as discussed below.

When one party fails to timely or properly serve another, rather than issuing a dismissal in the first instance, usually OAH will issue an order compelling proper serve and resting all applicable timelines, in order to ensure that all parties have the full opportunity to participate in the due process hearing process. In this case, District's complaint has been served on Student and all timelines have been reset due to the delay in service. Thus, while it is true that Student did not receive the compliant on the same day District filed the compliant with OAH, in her April 29, 2013 letter, to OAH, Student did acknowledge that she received the complaint through her prior attorney about six days following the April 23, 2013 date of filing with OAH. As a result of the late receipt of the complaint, Student requested and OAH granted Student's request to reset all applicable timelines in the case on May 2, 2013. In addition, District further served a copy of the compliant directly on Student on May 6, 2013.

Student has received the complaint and has had the opportunity to review the allegations and the issues raised in it. Student has not raised any issue regarding the sufficiency of the complaint, nor made any allegation that her right to defend against the issues raised in the complaint has been prejudiced due to late service. Because OAH has reset the timelines in the case, Student has been afforded the full opportunity to prepare for, and participate in mediation and the due process hearing process. Student has not requested additional time to do so. Therefore, Student's motion to dismiss is denied, and all dates currently set in this matter shall be confirmed.

ORDER

1. The motion to dismiss is denied.

2. All previously scheduled dates shall remain on calendar.

IT IS SO ORDERED.

Dated: May 10, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings