

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN LEANDRO UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013100168

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
STUDENT'S REQUEST TO RE-SET
TIMELINES

On October 21, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Matthew J. Tamel, Attorney at Law, appeared on behalf of the San Leandro Unified School District (District). Parents appeared on behalf of Student (Student). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following order:

1. Student's Motion to Re-Set Timelines. This matter is currently set for hearing beginning on October 29, 2013. On October 14, 2013, Mother filed a document entitled "Request for Continuance" in which she asks that the timeline for this case be reset due to the District's failure to properly serve the Parent(s).

The Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. § 1400, et. seq.) 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). (20 U.S.C. § 1415(b)(7)(B).) Further, title 20 of the United States Code, section 1415(c)(2)(A) requires the party requesting the due process hearing serve a copy of the complaint on the opposing party.

Pursuant to the Code of Civil Procedure, section 1013a, service is complete at the time of deposit into a receptacle maintained by the United States Postal Service for that purpose. Correspondence correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. (Evid. Code, § 641.)

During the PHC, both Parents were placed under oath. Parents live at separate addresses. Mother testified that she did not receive the District's Request for Due Process Hearing (complaint) until the week of October 14, 2013, despite the District's proof of service establishing that it mailed the complaint to her at her correct address on October 1,

2013. Mother has received OAH documents served upon her at her address. Father testified that he has never received a copy of the District's complaint and clarified his address for the record, which differs from that listed on the District's proof of service.¹ The District acknowledged that it did not properly serve the Father, but opposed Student's request on the grounds that the complaint presents an emergency situation, that Parents are aware of the hearing, have participated in mediation, and at least Mother was properly served. A proof of service filed with the complaint indicates a copy was sent by United States mail on October 1, 2013, to Mother at her correct address of record and to Father at an incorrect address.

Father established that he was not properly served with a copy of the District's complaint. Mother verified that she has received a copy of the District's request for hearing in the mail, although she was not clear as to when she received the District's request for hearing. In her request to reset timelines, Mother claims that she did not receive OAH's Scheduling Order until October 10, 2013, despite this having been sent by overnight mail on October 4, 2013. Mother did not refute the presumption of proper service and did not establish that she was not timely and properly served with the complaint.

Because the Father was not served with the complaint, this matter cannot proceed to hearing as currently set. Student's motion to reset timelines is granted. **The District is ordered to serve a copy of the complaint on the Father not later than the close of business on October 24, 2013, and concurrently provide OAH with proof of service of the complaint.** All previously set dates are vacated. OAH will serve a new scheduling order listing the dates for an expedited mediation, PHC and hearing dates on all parties upon receipt of proof of service of the complaint upon the Father.² The complaint will be deemed filed as of the date OAH receives the proof of service.

¹ The District has filed a separate complaint as to Student in OAH case number 2013100539. That proof of service also lists an incorrect address for Father based upon his testimony today. The parties are advised that this order does not address that second complaint and the parties are encouraged to file any motions deemed necessary to ensure that any jurisdictional deficiencies in terms of proper notice are expeditiously addressed.

² OAH will also serve Father with the original scheduling order dated October 4, 2013, and the October 11, 2013 Order Denying Request for Continuance. OAH will correct its records to reflect Father's correct last name.

2. Prehearing Conference Statements. OAH has received the District's PHC statement. The District is not required to file another statement unless it seeks to amend its list of witnesses or exhibits. The District is ordered to serve Father with its PHC statement and provide OAH with proof of service. Mother received the initial October 4, 2013 Scheduling Order and has not complied with the OAH requirement that all parties file with OAH and serve on each other, a PHC statement no later than three business days prior to the PHC. Parents are reminded that they must timely file a PHC conference statement and serve it upon the District. Parents are free to file a joint PHC statement on behalf of Student if they choose.

IT IS SO ORDERED.

Dated: October 21, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings