

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2013110126

ORDER GRANTING MOTION TO
DISMISS

On October 31, 2013, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming Panama Buena-Vista Union School District (District) as the respondent.

On November 16, 2013, the District filed a motion to dismiss the complaint, alleging that it has not been served with the complaint. Student did not respond to the motion. .

APPLICABLE LAW

A person or entity filing a complaint pursuant to the Individuals with Disabilities Education Act (IDEA) must provide the respondent with a copy of the complaint at the same time the complaint is filed. (20 U.S.C. 1415 (b)(7)(A)(i); Ed. Code § 56502, subd. (c)(1).) The complaint may be served by mail or facsimile. (Cal. Code Regs., tit. 5 § 3083.)

DISCUSSION AND ORDER

In its motion to dismiss the District claims it never received a copy of the complaint. Two supporting sworn declarations are attached to the motion, one by the District's attorney, and the other by the secretary to the District's Director of Special Education, which establish that the District never received a copy of the complaint.

Student's attorney attached a proof of service to the complaint filed with OAH. The proof of service states that Student's attorney served the District via facsimile transmission to (661) 832-7565. This is the facsimile number on file with OAH for the District. The proof of service also reflects that Student's attorney can provide a copy of the transmission report. However, because Student did not respond to the motion to dismiss in any fashion, there is no evidence that the District was, in fact, served by Student, and the evidence establishes that

it was not. Accordingly, District's motion to dismiss is granted, and Student's complaint against the District is dismissed without prejudice.

IT IS SO ORDERED.

Dated: November 22, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings