BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, v. STUDENT.	OAH Case No. 2015050838 ORDER DENYING MOTION TO DISMISS

On May 21, 2015, Palos Verdes Unified School District filed a Request for Due Process Hearing (complaint), naming Student. The complaint alleges that Student is a non-conserved adult.

On August 18, 2015, Student's non-attorney advocate filed a "Status Update" on behalf of Student, which the Office of Administrative Hearings interpreted as a Motion to Dismiss the matter. Student's advocate alleged that the matter should be "tabled or dismissed," because Student "has been on the run and out of communication." Student's motion was not supported by a declaration signed under penalty of perjury.

OAH received no response to the Motion to Dismiss from District.

APPLICABLE LAW

The purpose of the Individuals with Disabilities in Education Improvement Act (IDEA) (20 U.S.C. §§ 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education." (20 U.S.C. §§ 1400(d)(1)(A), (B), and (C); Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

Notice of the Complaint

In California, the party requesting a special education due process hearing must provide the opposing party with notice of the complaint by delivering a copy of the complaint to them at the same time that it is filed with OAH. (20 U.S.C. § 1415(b)(7)(A); Ed. Code, § 56502, subd. (c)(1).) Service of a notice, motion or writing pertaining to special education due process hearing procedures shall be delivered personally or sent by first class

mail or other means, including facsimile transmission "if complete and without error," to OAH, or other persons or entities at their last known addresses, and, if the person or entity is a party with an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative. Service must be made by a method that ensures receipt by all parties and OAH in a comparable and timely manner. (Ed. Code § 56100, subds. (a) and (j); Cal. Code Regs., tit 5, § 3083, subds. (a)-(c).)

Transfer of Rights

Education Code section 56041.5 provides:

> When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

DISCUSSION

Student's date of birth is July 11, 1996. She was 18 years old when District served and filed its complaint on May 21, 2015. Student's motion did not contradict District's position that Student is a non-conserved adult.

District's complaint contains a formal proof of service, dated May 21, 2015, signed under penalty of perjury, stating that the complaint was served on Student's mother at Student's and mother's address of record, and on Student's father at his address of record via United States overnight mail. The proof of service also states that the complaint was served on Student's advocate via regular U.S. Mail and electronic mail.

On May 23, 2015, OAH served a Scheduling Order and Notice of Due Process Hearing and Mediation on Student's parents via regular U.S. Mail.

On September 8, 2015, OAH served an Order Resetting Due Process Hearing and Prehearing Conference on Student at her last known address via regular U.S. Mail.

While it may be true that Student may not appear at the hearing, her anticipated failure to appear is not grounds to dismiss the matter. Even if Student ultimately decides not to appear, District retains the right to establish that it offered her an appropriate educational program. Accordingly, there is no basis to support Student's motion.

ORDER

Student's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: September 21, 2015

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings