

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SANTA ROSA CITY SCHOOLS.
OAH CASE NUMBER 2021080463

ORDER DENYING MOTION TO EXTEND PROCEDURAL
TIMELINES RESOLUTION SESSION

SEPTEMBER 21, 2021

The procedural history of this matter has been overly complicated by both parties' failure to effect proper service on one another. The failures have necessitated several motions and Orders, and unnecessary expenditure of judicial resources. As far as the instant motion goes, Student's motion to treat email service of the complaint on August 16, 2021, August 30, 2021 and September 9, 2021 as proper service, and to extend the required date for the resolution session, is denied, for the following reasons.

On August 16, 2021, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH. Student did not properly serve the complaint

on the respondent Santa Rosa City Schools. The proof of service attached to the complaint stated as follows: "[X] {BY FACSIMILE} I caused a copy of said pleadings/document(s) to be sent via OAH SECUREEMAILFILING SYSTEM transmission to the interested parties listed below. The facsimile machine I used complied with the RULE 2003 (3), and no error was reported by the machine. Pursuant to Rule 2008 (e) (3), I caused the machine to print a record of the transmission."

There are many errors in this statement. Firstly, the "interested parties listed below" are not in fact listed. Secondly, the Rules 2003 and 2008 referenced have no relationship to OAH proceedings. Thirdly, the OAH Secure Mail Filing System is not a method of "transmission to the interested parties," even if such parties were in fact listed.

Title 5 of the California Code of Regulations, Section 3083, subsection (b), which governs service in OAH special education due process proceeding, explicitly states: "Unless a provision specifies the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender."

According to Student's Motion, several attempts at fax transmission were unsuccessful. However, rather than simply mailing the document by first class, certified mail or personal delivery, as the regulation authorizes, Student's representatives then emailed the document. Email is not specifically authorized by any regulation, and service of the complaint has therefore never yet been effected in this case. Student's contention that Santa Rosa was "aware" of the complaint does not absolve it of the necessity to effect legally valid service. The date of service governs important procedural deadlines including the resolution session, the dates of hearings and

decisions, and the statute of limitations, among others. Therefore, legally valid service, and a legally valid proof of service, is not a mere formality.

Due to the lack of proper service, there ensued two Motions to Dismiss by Santa Rosa, the first of which was itself not served on Student and was therefore denied. The second Motion to Dismiss was also denied, with an Order dated September 13, 2021, that the complaint should be served on or before September 16, 2021. Santa Rosa's fax number was provided in the Order, but in no way did that Order excuse Student's duty to effect legally proper service in the event that fax number was incorrect. The Order also ordered that Student should file with OAH a proper proof of service, and that after service was effected, Santa Rosa should attempt to schedule a resolution session and, if unsuccessful after reasonable attempts, it could re-file another Motion to Dismiss.

Student failed to comply with OAH's September 13, 2021 Order, which required legally valid service even in the event that fax delivery failed. Student has therefore still failed to effect legally proper service on Santa Rosa. Student's Motion to treat its email service as proper, and to extend the deadline for the resolution session is hereby denied.

IT IS SO ORDERED

A handwritten signature in cursive script that reads "June Lehrman".

June Lehrman

Administrative Law Judge

Office of Administrative Hearings