

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 DISMISS WITHOUT
PREJUDICE

SEPTEMBER 13, 2021

On August 16, 2021, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Santa Rosa Elementary School District as respondent.

On August 27, 2021, Santa Rosa City Schools, referred to as Santa Rosa filed a motion to dismiss the complaint for Student's failure to serve the complaint on Santa Rosa, and for Parents' failure to participate in a mandatory resolution session.

On September 2, 2021, OAH issued an Order Denying Motion to Dismiss Without Prejudice because no proof of service accompanied the motion.

On September 7, 2021, Santa Rose refiled the motion to dismiss, along with a proof of service showing service of the motion to dismiss by mail on Parents. OAH has not received a response to the motion to dismiss.

APPLICABLE LAW

A party filing a complaint for due process hearing shall forward a copy of the complaint to the local educational agency (LEA) at the time the complaint is filed. (Ed. Code, § 56500.2, subd. (a)(2) and (c)(1); 20 U.S.C. § 1415(i)(b)(7)(A); 34 C.F.R. § 300.153(d).

A LEA is required to convene a meeting with the parents and the relevant members of the individualized education program, IEP team within 15 days of receiving a notice of a student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or if the parties agree to attend mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3). If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. § 300.510(b)(4).)

DISCUSSION

Santa Rosa's motion to dismiss contends Student did not serve his due process complaint on Santa Rosa or its representative. Santa Rosa contends it only became aware of the complaint when it received the Scheduling Order from OAH on August 18, 2021.

Santa Rosa contends it has attempted to schedule a resolution session with Parents but has not received a response from Parents or Student's counsel of record. Student's Parents are required to participate in a resolution session before a due process hearing may be commenced. OAH has discretion to dismiss the matter if Parents refuse to participate in resolution session and Santa Rosa provides appropriate documentation supporting its motion to dismiss.

Student did not file a response to Santa Rosa's motion and therefore he has not disputed Santa Rosa's assertion that it was not served with the complaint. Further, there is no information establishing Student served the complaint on Santa Rosa since the receipt of Santa Rosa's motion to dismiss. Without such service, Santa Rosa does not have adequate notice of the specific allegations being made against it and is unable to prepare a defense.

Rather than dismissing the complaint, Student is ordered to serve his complaint on Santa Rosa. Further, Santa Rosa is ordered to schedule a resolution session with Parents within 15-days of receiving the due process complaint. In the event Santa Rosa is unable to obtain Parent's participation in the resolution meeting after reasonable efforts have been made, Santa Rosa may within 30-days of service of the due process complaint refile its motion to dismiss. In the event Santa Rosa refiles its motion to dismiss, such motion shall be accompanied by a declaration under penalty of perjury documenting Santa Rosa's efforts to schedule the resolution session.

ORDER

1. Santa Rosa's motion to dismiss is denied without prejudice.
2. Student is ordered to serve his complaint on Santa Rosa no later than the close of business on September 16, 2021. The complaint shall be served at

Santa Rosa City Schools, Attn. Sonya Randrup, Education Services,
217 Ridgway Avenue, Santa Rosa, California 95401. Ms. Randup's fax
number is (707) 890-3790.

3. Concurrently with service of the complaint, Student shall file a copy of the proof of service with OAH, including proof of completed facsimile transmission if complaint served by fax.
4. Within 15-days of receiving the complaint, Santa Rosa shall send Student's Parents and his counsel of record, Sheila Bayne, Law Offices of Sheila C. Bayne, 4000 MacArthur Blvd., East Tower, Suite 600, Newport Beach, California 92660; Telephone (949) 636-6994; Facsimile (714) 276-6437 a proposal containing two proposed dates and times for a resolution session. In the event Student fails to respond Santa Rosa's proposal or the resolution session does not take place within 30 days of service of the complaint, Santa Rosa may refile its motion to dismiss. In the event Santa Rosa refiles its motion to dismiss, such motion shall be accompanied by a declaration under penalty of perjury documenting Santa Rosa's efforts to schedule the resolution session.
5. OAH will issue a new scheduling order setting hearing dates upon receipt of the proof of service of the complaint.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings