

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090389

ORDER DENYING REQUEST TO DISMISS CASE FOR  
FAILURE TO SERVE REQUEST FOR DUE PROCESS

SEPTEMBER 27, 2021

On September 13, 2021, Student filed a Due Process Hearing Request, also called a complaint, with the Office of Administrative Hearings, called OAH, naming San Juan Unified School District as respondent. On September 17, 2021, San Juan filed a motion to dismiss the case for failure to serve the complaint. No response to the motion was received from Student.

APPLICABLE LAW

California law specifies the means by which a request for due process hearing must be served on the respondents to the complaint. "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.” (5 C.C.R. §3083, subd. (b).)

Student has provided no regulatory authority allowing the complaint to be served by email without San Juan’s consent. California Code of Civil Procedure, section 1010.6, subdivision (a)(1)(A) and (B) state:

(A) “Electronic service” means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person, including the party or other person’s attorney, or through an electronic filing service provider.

(B) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

Here, San Juan did not meet its burden of providing legal authority establishing that dismissal is the appropriate remedy. It asks for dismissal based on allegations that Student’s counsel repeatedly failed to serve San Juan complaints; however, no evidence of such was provided. This does not excuse Student’s failure to establish consent to email service prior to choosing that service method. In the future, Student shall be expected to comply with title 5 of the California Code of Regulations, section 3083 in serving documents in special education cases.

San Juan has acknowledged receiving a courtesy copy of the complaint from OAH on September 14, 2021. This puts San Juan on notice of the claims being made. However, San Juan has been prejudiced in this instance by the four-day delay of notice

of the complaint. The prejudice does not support dismissal. It does, however, support an adjustment of the filing date of the complaint. Therefore, the complaint shall be deemed filed as of the date San Juan had notice of the claims, that is September 14, 2021. The resolution period is hereby extended by four days. All dates previously scheduled shall remain on calendar as the four-day extension will not impact the currently scheduled prehearing conference or hearing dates.

## ORDER

1. San Juan's request for dismissal is denied.
2. The complaint will be deemed filed on the date San Juan got notice of the claims, September 14, 2021.
3. The resolution period will be extended by four days.
4. All dates currently scheduled for prehearing conference and hearing shall remain on calendar.
5. Student is to serve all future filings on San Juan in accordance with title 5 Cal Code Regs. §3083, subd. (b).

IT IS SO ORDERED.

*Penelope S. Pahl*

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings