

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 2021090464

ORDER GRANTING MOTION TO DISMISS FOR FAILURE TO
SERVE COMPLAINT

SEPTEMBER 24, 2021

On September 13, 2021, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Juan Unified School District. Student served San Juan Unified a copy of the complaint by email on September 10, 2021.

On September 17, 2021, San Juan Unified filed a motion, supported by declaration, to dismiss Student's complaint for failure to properly serve San Juan Unified with a copy of the complaint. OAH did not receive a response from Student.

The party filing the complaint, is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A), which includes proper service of the complaint.

Service of documents in special education due process proceedings is governed by Title 5 of the California Code of Regulations, section 3083, which states that service of notice, motions, or other writings pertaining to special education due process hearing procedures shall be delivered personally or sent by mail "or other means" to the party's attorney or other authorized representative. Unless otherwise specified, 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." (Cal. Code. Regs., tit. 5, § 3083, subd. (b).) There is no specific provision or regulation authorizing service of documents solely by email.

Although not specifically applicable to special education due process proceedings, Code of Civil Procedure section 1010.6 states, in pertinent part, that electronic service of documents is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action, or the court has ordered electronic service.

Here, San Juan Unified had not indicated it had agreed to accept service by email at the time Student filed the complaint. Therefore, Student failed to properly serve San Juan Unified a copy of the complaint. Accordingly, the matter is dismissed.

ORDER

1. San Juan Unified's Motion to Dismiss for Failure to Serve Complaint is granted. The matter is dismissed. All dates are vacated.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings