

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LAKE ELSINORE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090351

ORDER DENYING MOTION TO DISMISS AND GRANTING
MOTION TO RESET TIMELINES AND ORDER DENYING
WITHOUT PREJUDICE MOTION TO DISMISS ISSUE 2 FOR
LACK OF JURISDICTION

OCTOBER 06, 2021

On September 13, 2021, Parents on behalf of Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Lake Elsinore Unified School District, referred to as Lake Elsinore. The Office of Administrative Hearings is referred to as OAH.

On September 30, 2021, Lake Elsinore filed a Motion to Dismiss the complaint on the grounds it was improperly served with the complaint. The proof of service filed with

Student's complaint states the complaint was served on Lake Elsinore's Superintendent on September 10, 2021 by electronic mail. Lake Elsinore's motion requests that the complaint be dismissed or that the timelines for this matter be reset. OAH has not received a response from Student.

There is no statutory or regulatory provision in California that permits service of process by email on opposing parties. Service of a notice, motion or writing pertaining to special education due process hearings shall be delivered personally or sent by first class mail or other means, including facsimile transmission, to OAH, or other persons or entities at their last known address, 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. (Cal. Code Reg, tit 5, § 3083.) Special education law does not provide for a summary judgment procedure, although OAH will grant motions to dismiss improper parties or allegations that are facially outside OAH jurisdiction.

The proof of service reflects the complaint was served by electronic mail, which is not a permissible method of service for special education due process complaints. (Cal. Code Reg, tit 5, § 3083.) Lake Elsinore acknowledges it became aware of the complaint on September 23, 2021 following notification from OAH. Therefore, Student's motion to dismiss on the grounds of improper service is denied. However, in light of Student's improper service and the resulting delay, the complaint shall be deemed filed on September 23, 2021.

OAH requires that motions involving different subject matters be filed in separate motions. Lake Elsinore's motion to dismiss Issue 2 on the grounds OAH does not have jurisdiction is denied without prejudice to Lake Elsinore's right to file a separate motion.

ORDER

1. Lake Elsinore's Motion to Dismiss is denied.
2. All dates are vacated based upon Student's failure to properly serve the complaint. The complaint shall be deemed filed on September 23, 2021.
3. Lake Elsinore's Motion to Dismiss Issue 2 based upon lack of jurisdiction is denied without prejudice to Lake Elsinore's right to file a separate motion.
4. OAH shall send out a new scheduling order based upon Lake Elsinore's receipt of the complaint on September 23, 2021.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings