

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

IMPERIAL UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100900

ORDER DENYING MOTION TO DISMISS COMPLAINT FOR
LACK OF PROPER SERVICE

NOVEMBER 8, 2021

On October 29, 2021, Parent on behalf of Student filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing, naming Imperial Unified School District. A Request for Due Process Hearing is referred to as a complaint.

On November 2, 2021, Imperial Unified filed a Notice of Objection Based on Petitioner's Failure to Serve the Due Process Complaint to Respondent. Imperial Unified contends OAH does not have jurisdiction over this matter because Imperial Unified had not been served with a copy of Student's complaint. Imperial Unified's Notice of

Objection is treated as a motion to dismiss the complaint for lack of proper service. Student filed an objection to the motion on November 4, 2021.

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 the California Code of Regulations, title 5, 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." There is no specific provision or regulation authorizing service of documents solely by email.

The Proof of Service attached to the complaint establishes that Imperial Unified was served a copy of the complaint on October 29, 2021, by facsimile to Imperial Unified's fax number (760) 355-4511. Further, Student offers a declaration by Attorney Ashok Pathi in support of Student's objection. Pathi declares that his office served Imperial Unified with a copy of the complaint by facsimile to (760) 355-4511, the only fax number listed for Imperial Unified's special education department.

Student's objection also includes two exhibits. The first exhibit is a copy of Student's nine-page complaint and proof of service that was filed with OAH on October 29, 2021, time stamped 1:19 PM. The second exhibit is a fax confirmation page

dated October 29, 2021, which indicate a fax of nine pages at 1:19 PM to the number 1+(760) 355-4511. The fax confirmation indicates the fax was complete and without error. Imperial Unified offers no declaration or exhibit to support its contention that it had not received a copy of the complaint on October 29, 2021.

The Proof of Service of the complaint, Pathi's declaration, and Student's exhibits establishes that Imperial Unified was properly served a copy of Student's complaint by facsimile on October 29, 2021. The service by facsimile was complete and without error. Accordingly, Imperial Unified's motion to dismiss is denied. The matter will proceed as scheduled.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings