

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CENTRAL UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024010076

ORDER DENYING MOTIONS TO DISMISS COMPLAINT
AND ALTERNATIVELY CONTINUE THE DUE PROCESS
HEARING

JANUARY 24, 2024

On January 3, 2024, Student filed a due process hearing request, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Central Unified School District as respondent. On January 18, 2024, Central filed a motion to dismiss the complaint for Student's failure to serve the complaint on Central. Student did not respond to the motion to dismiss.

MOTION TO DISMISS COMPLAINT FOR LACK OF SERVICE

The applicable special education services regulation states:

"Notwithstanding Government Code section 11440.20 of the APA, service of notice, motions, or other writings pertaining to special education due process hearing procedures to the California agency or nonprofit organization or entity that is responsible for conducting due process hearings and any other person or entity are subject to the following provisions:

- (a) The notice, motion, or writing shall be delivered personally or sent by mail or other means to the agency or nonprofit organization or entity that is responsible for conducting due process hearings, person, or entity 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.
- (b) Unless a provision specifies 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.
- (c) Service must be made by a method that ensures receipt by all parties and the agency or nonprofit organization or entity that is responsible for conducting due process hearings in a comparable and timely manner.

Student's proof of service, indicates that service was effected on "CUSD" via facsimile or FAX as it is stated, on January 3, 2024. Central's motion and supporting declaration by Central's special education director, Julie Shafer, asserts that, after receiving the scheduling order in the case, it conducted a "diligent search of mail"

received at the district office and at Tilley elementary school, which was Student's prior school location and found no record of having received the complaint. Central also asserted that it contacted two non-public schools Student attended, Learn Academy and Creative Alternatives School, to see if they had received the due process complaint, and were informed they had not. Central goes on to argue it did not agree to receive the due process complaint via email. Shafer's declaration concludes by stating the complaint was not received "by mail, in-person or by email.". Central does not explain why its search did not include a review of faxes received, in light of the information in the proof of service that CUSD was served via FAX.

The applicable regulation directs a party to a special education due hearing process to send a copy of the complaint by "mail or other means..." (Cal Code Regs, tit. 5, § 3083, subd. (a).) The regulation goes on to state that "mail" could include, "other electronic means as provided by regulation, in the discretion of the sender." (Cal Code Regs, tit. 5, § 3083, subd. (b).) Facsimile is an approved electronic means of transmission pursuant to this regulation. (*Ibid*) The regulation concludes by instructing parties to serve documents using a method that ensures receipt. (Cal Code Regs, tit. 5, § 3083, subd. (c).)

Student has filed a proof of service stating the complaint was served via facsimile and has therefore, made a prima facie showing of service that complies with the applicable regulation. The filing of a proof of services creates a rebuttable presumption that the service was proper, so long as the proof of service complies with the statute requirements. (*Hearn v. Howard* (2009) 177 Cal. App. 4th 642, 653.) By failing to address the question of whether the complaint was received via facsimile, Central has not offered adequate evidence to overcome the presumption that the document was served.

MOTION TO CONTINUE THE DUE PROCESS HEARING

Central's motion to dismiss includes an alternative motion for a continuance, which states:

In the alternative, the District requests that OAH order Petitioner to properly serve the District with his complaint and requests that OAH continue the hearing to provide the District with sufficient time to receive and review Student's due process complaint."

No additional argument, facts establishing good cause for a continuance or legal authority establishing grounds for a continuance are stated.

OAH must conduct a due process hearing and render a decision within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

In this case, Central has offered no grounds for a continuance. It has not established it did not receive a copy of the complaint, as it failed to address Student's asserted service via facsimile. Nor were other grounds for continuance offered. Central's alternative motion for a continuance is denied.

ORDER

1. Central Unified School District's motion to dismiss is denied.
2. The case shall proceed as scheduled.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings