BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PLEASANT VALLEY SCHOOL DISTRICT.

OAH CASE NUMBER 2021040386

ORDER DENYING MOTION TO DISMISS AND GRANTING FILING DATE ADJUSTMENT

APRIL 30, 2021

On April 8, 2021, Student filed a Request for Due Process Hearing, also called a complaint, with the Office of Administrative Hearings, or OAH, naming Pleasant Valley School District as respondent. On April 26, Pleasant Valley filed a Motion to Dismiss the complaint on the grounds that it had not received proper service of the complaint. On April 29, 2021, Student filed an opposition to the motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free

appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party may initiate a procedure examining asserted violations of Student's and Parents' rights under the IDEA by filing a complaint with OAH "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

The Due Process Hearing complaint must be served on the responding party in order for the hearing procedures to begin. (5 C.C.R. §3083.)

DISCUSSION

Pleasant Valley asserts that the complaint service was defective because the complaint was not served when it was filed; and ultimately was only served via email, without Pleasant Valley's permission. Sara Chacon, a legal assistant with the firm representing Pleasant Valley, acknowledges receipt of the complaint via email on April 16, 2021 in her declaration which accompanied Pleasant Valley's motion. Counsel for Pleasant Valley had specifically declined to accept service of the complaint via email in prior communications with Counsel for Student.

In its opposition to the motion, Student asserts that the complaint was originally served on Pleasant Valley via facsimile. Counsel for Student states that she does not understand why Pleasant Valley did not receive it. Student argues that, ultimately, Pleasant Valley received the complaint via email on April 16, 2021. Student contends that the service requirements of the California Code of Civil Procedure do not apply to OAH and service of documents related to due process hearings are not required by the IDEA. Student cites title 34 of the Code of Federal Regulations, section 300.508 as

support for his argument that, all that is required by federal regulation is that the complaint be "provided," which Student differentiates from a requirement that the complaint be served. Student asserts that title 34 of the Code of Federal Regulations, section 300.508(a)(2)'s requirement that the complaint be "forwarded" to the opposing party means only the filing party must, "get it to them." The service requirements are not that lax.

Student fails to acknowledge that the federal regulations assign the public agency responsible for conducting the hearings with creating procedures for service. (34 C.F.R. 300.508(a)(1).) California's Department of Education has such procedures which are detailed in title 5 of the California Code of Regulations, section 3083. That regulation provides:

> "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:
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> (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.
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> (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." (5 C.C.R. §3083, subd. (a) and (b).)

Service of a special education due process complaint that complies with title 5 of the California Code of Regulations, section 3083 is required. Proper service ensures receipt by all parties and the agency or nonprofit organization or entity that is responsible for conducting due process hearings in timely manner." (5 C.C.R. §3083,

subd. (c).) Email service is not provided for by any California regulation pertaining to special education hearings; although an agreement between the parties to accept service via email is not prohibited.

Pleasant Valley has provided no legal authority to support its request for dismissal of the complaint due to service being completed by a method it did not prefer. Pleasant Valley has demonstrated no prejudice resulting from receipt of the complaint via email. Furthermore, any claim of prejudice based on being served via email would be undermined by the fact that Pleasant Valley has served every document it has filed in this case on Student's counsel via email and has agreed to accept email service of documents from OAH.

However, Student has failed to demonstrate that the complaint in this case was served when it was filed. Neither the papers opposing this motion, nor the proof of service attached to the complaint allow a conclusion that the complaint was sent to Pleasant Valley via facsimile when the case was filed. Student's proof of service provides only an email address for service to Pleasant Valley, but states the complaint was served via facsimile.

Any prejudice related to service in this matter is limited to the loss of resolution time between the date of filing and the date the complaint was served on Pleasant Valley's counsel via email on April 16, 2021. Therefore, the date of filing will be adjusted to reflect the date on which a copy of the complaint was received by Pleasant Valley, that is, April 16, 2021. As the currently scheduled Prehearing Conference and Hearing are scheduled more than 30 days after the new filing date, the parties will receive their full resolution period. Both the Prehearing Conference and Hearing shall proceed as currently scheduled.

ORDER

1. Pleasant Valley's Motion to Dismiss is denied.
2. The filing date of the complaint in this matter is hereby adjusted to April 16, 2021. This date shall be used for purposes of calculating all dates reliant on receipt of the complaint by Pleasant Valley as well as all dates related to the filing of the complaint.
3. The Prehearing Conference and Hearing dates will proceed as stated in the April 13, 2021 Scheduling Order.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings