

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014040200

ORDER DENYING WITHOUT
PREJUDICE DISTRICT'S REQUEST
TO STAY PROCEEDINGS

On April 1, 2014, Student's Parent, through her legal counsel, filed a due process hearing request (complaint) with the Office of Administrative Hearings on behalf of Student naming the San Francisco Unified School District (District). The proof of service attached to the complaint indicates service on Elizabeth Blanco, Assistant Superintendent, via fax number (415) 750-8690. On April 3, 2014, OAH served the scheduling order on the parties.

On April 4, 2014, counsel for District filed a letter with OAH. The letter states that District had received the scheduling order from OAH, but had never been served with a copy of Student's complaint. District, through its legal counsel, requested that OAH remove this case from the OAH calendar until such time as Student serves the complaint on District. The letter did not include any declarations in support of District's request to, in effect, stay proceedings pending service of the complaint on District.

Student has not filed a response to District's request.

APPLICABLE LAW AND DISCUSSION

Education Code section 56502, subdivisions (a) and (c)(1) and (2), state that the party initiating a due process hearing shall provide the respondent with a copy of the complaint at the same time it is filed with OAH. A party may not have a hearing until the notification requirements are met.

Education Code section 56502, subdivision (d)(1) states that the notice requirement are deemed sufficient unless the Administrative Law Judge is notified within 15 days of service of the notice of hearing. Within five days of such notice, the ALJ shall make a determination of on the face of the notice whether the notification requirements are met.

Here, Student included a proof of service with the complaint indicating that District was served by fax. District has not provided any declaration in support of its request to stay

the proceedings in this matter. District's letter from its legal counsel is not evidence that the Student's complaint was never received by District.

District's request is therefore denied without prejudice. Should District wish to renew the request, it must be accompanied by a supporting declaration.

ORDER

District's request to stay the proceedings in Student's case is denied without prejudice.

DATE: April 11, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings