

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. 2009040155

ORDER GRANTING MOTION TO
DISMISS

On April 2, 2009, Parent filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) on behalf of Student, naming the San Francisco Unified School District (District).

On April 27, 2009, the District, represented by Ruth Diep, Attorney at Law, filed a Motion to Dismiss the complaint, alleging that Student failed to serve the District with notice of the complaint as required by law. The motion was served on Parent by mail.

To date, Student has not filed a response to this motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Improvement Act (IDEA 2004) (20 U.S.C. 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE). (20 U.S.C. § 1400(d)(1)(A), (B), and (C); Ed. Code, § 56000.) A party has the right to present a complaint “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 party requesting a special education due process hearing must provide the opposing party with notice of the complaint by delivering a copy of the complaint to them at the same time that it is filed with OAH. (20 U.S.C. § 1415(b)(7)(A); Ed. Code, § 56501.5, subd. (c).) The OAH complaint form contains a section entitled “Statement of Service” for the party requesting a hearing to indicate by checking boxes whether he or she provided a copy of the complaint to the other named party and OAH by first class mail, facsimile transmission, messenger service, or personal delivery, and to sign the statement.

DISCUSSION

In the present matter, Parent signed the Statement of Service section of the OAH complaint form and checked the messenger service box indicating that he served a copy of the complaint on the District. However, the instructions read as follows: "Messenger Service (UPS, FedEx, Other courier service) Please attach proof of service." While Parent attached school documents as exhibits to Student's complaint, he did not attach a proof of service from any messenger service showing when and where the District was served. The District's motion includes representations from its attorney that the District has no record of receiving a copy of the complaint from Student. Student has not filed any response to assert that Parent duly served the District, or to identify the manner in which he provided a copy of the complaint to the District, what messenger service he may have used, or when. Accordingly, the District has made a sufficient showing that it was not provided due process notice in this case.

Based on the foregoing, the complaint shall be dismissed. Student has the right to file another complaint and ensure that all named parties and OAH are duly served.

ORDER

1. District's Motion to Dismiss is granted, and the matter is dismissed.
2. All dates previously scheduled in this matter are vacated.

Dated: May 15, 2009

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings