

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL  
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011110164

ORDER DENYING MOTION TO  
DISMISS

On November 3, 2011, the Capistrano Unified School District (District) file a Due Process Request (complaint) naming Parents on behalf of Student (Student) as respondents. Attached to the complaint was a proof of service which stated that service had been perfected by facsimile and mail on November 1, 2011.

On November 4, 2011, the Office of Administrative Hearings (OAH) issued a Scheduling Order. Per the Scheduling Order, mediation was scheduled for November 16, 2011. The District filed a notice of mediation cancellation on November 15, 2011.

On November 18, 2011, Student filed this motion to dismiss the complaint because the District did not properly serve the complaint. Student attached to the complaint an email string. In an email dated November 18, 2011, Parents state that they did not receive a copy of the complaint by mail or facsimile as stated in the proof of service. When Parents received the Scheduling Order, they contacted OAH and were given the phone number of District's counsel. Parents then phoned District's counsel's office and then did receive a copy of the complaint from District's counsel office as an email attachment. Thus, Student was served.

Student's motion to dismiss is denied.

IT IS SO ORDERED.

Dated: November 23, 2011

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings