

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015110890

ORDER DENYING MOTION TO  
DISMISS; ORDER GRANTING  
MOTION TO EXTEND PROCEDURAL  
TIMELINES

PROCEDURAL BACKGROUND

Student filed a request for due process (complaint) with the Office of Administrative Hearings on November 19, 2015, naming the Vallejo City Unified School District. On November 25, 2015, District filed a motion to dismiss the complaint, contending that it had never been served with a copy of the complaint, and was only aware of its existence based on the scheduling order it received from OAH.

Student filed an opposition to the motion to dismiss on December 1, 2015. Student's opposition was supported by a declaration of his attorney that stated that the complaint had been served on District's Director of Special Education by email and by fax on November 19, 2015. There was no indication the email had not been received by the Director. Student acknowledged that his attorney did not receive a confirmation that the faxed copy of the complaint had been received by District. Student stated that he re-served the complaint on District on November 29, 2015, a Sunday, by emailing District's attorney with a copy, and does not oppose extending procedural timelines for the case.

On December 1, 2015, District filed a reply to Student's opposition. District, through a declaration of its attorney, stated that it had never received the faxed copy of the complaint. District acknowledged that its Director of Special Education had since reviewed his email and had located the copy of the complaint sent by him from Student on November 19. District stated that the Director receives numerous emails each day, which is why the one from Student was overlooked, and that because of this it only accepts service of documents by fax or through regular mail. District acknowledged that it now had a copy of the complaint, which its attorney retrieved from her email on November 30. District stated that it no longer was requesting dismissal of Student's case, but moved instead to re-set the timelines and the scheduled dates in this matter, using November 30, 2015, as the filing date for the complaint. District agreed that solely for purposes of resolving the issue of the

service of the complaint in this case, it would agree to accept the complaint emailed to its attorney as proper service.

## APPLICABLE LAW AND DISCUSSION

There is no statutory or regulatory provision in California that permits service of process by email on opposing parties.<sup>1</sup> Title 5, California Code of Regulations, section 3083, subdivision (b), states:

Unless a provision specifies the form of mail, service or notice by mail may be by first-class mail, registered, 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.

Subdivision (c) of title 5, of California Code of Regulations, section 3083, states:

Service must be made by a method that ensures the 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.

The purpose of this section of the Code of Regulations is to ensure reliable service on all parties. Unless email is acknowledged, it cannot be considered reliable. The email service attempted by Student in this case on District's Director of Special Education was never acknowledged because he was not aware that Student had sent him the request for due process. Student's email service therefore cannot be deemed proper service of the complaint.

Service by facsimile is proper if transmission was completed without any errors. Here, Student acknowledges that his attorney never received confirmation of the service by facsimile attempted on District on November 19, 2015. Therefore, there is no evidence that proper service of the complaint was effectuated on District on November 19, 2015.

District has since agreed to accept the emailed copy of the complaint received by its attorney on November 30, 2015. The parties are in agreement that the hearing timeline be re-set based on the failure of District to receive the complaint when Student filed it with OAH.

Since District has now received a copy of Student's complaint, dismissal of this case is not warranted. However, due to District's delay in receipt of the complaint, District's request to extend the procedural hearing timelines is granted. Student's complaint is deemed filed as of November 30, 2015. OAH will issue an amended scheduling order based on that filing date.

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<sup>1</sup> OAH now accepts electronic filing of documents pursuant to new agency policy. This change does not affect the responsibility of a party to effect service of pleadings on other parties to an action pursuant to title 5, California Code of Regulations, section 3083.

ORDER

1. District's motion to dismiss is denied, and its motion to extend procedural timelines is granted.
2. All previously set dates in this matter are vacated.
3. The timelines for hearing established pursuant to title 20 United States Code section 1415(f)(1)(B) shall recommence on November 30, 2015.
4. OAH will issue an amended scheduling order with new dates for mediation, the prehearing conference, and the due process hearing.

DATE: December 4, 2015

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings