BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NOVATO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120483

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 12, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Novato Unified School District. On December 27, 2019, Novato filed a Notice of Insufficiency as to the complaint. Novato's proof of service states that it served the Notice of Insufficiency on Student's counsel by email only, based on a written agreement of the parties pursuant to California Code of Civil Procedure, section 1010.6, to accept service by electronic means.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing

unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. Opn.]; *Escambia County Bd. Of Educ. V. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. Opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. Of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. Opn.].) Whether the complaint is sufficient is a

matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. Of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

Service of documents in special education due process proceedings is governed by the California Code of Regulations, title 5, section 3083, which states that service of notice, motions, or other writings pertaining to special education due process hearing procedures shall be delivered personally or sent by mail "or other means" to the party's attorney or other authorized representative. Unless otherwise specified, 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." There is no specific provision or regulation authorizing service of documents solely by email.

Although not specifically applicable to special education due process proceedings, Code of Civil Procedure section 1010.6 states, in pertinent part, that electronic service of documents is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action, or the court has ordered electronic service.

DISCUSSION

Student's complaint was filed on December 12, 2019. Although Novato's Notice of Insufficiency was dated and filed with OAH within 15 days on December 27, 2019, it was not properly served. Service by email does not comport with California Code of Regulations, title 5, section 3083. That section references "other means" of service other than personal delivery or mail, but the regulation in its entirety does not authorize

electronic means other than facsimile, unless provided for by regulation. No such regulation has been cited by Novato. Student opposes the Notice of Insufficiency, citing the Code of Civil Procedure, and establishing that there has been no consent to email service in this action. Therefore, Novato's Notice of Insufficiency was not properly served within 15 days after it received the complaint and it was not timely. Student's complaint is deemed sufficient.

ORDER

1. The complaint is deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATED: December 31, 2019

DocuSigned by:
June Lehrman
[illegible]

June Lehrman
Administrative Law Judge
Office of Administrative Hearings