BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090646 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 17, 2018 Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Tehachapi Unified School District. On October 3, 2018 Tehachapi filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (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 the Office of Administrative Hearings 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).)

DISCUSSION

Student's complaint was filed on September 17, 2018. Tehachapi indicates in its NOI Student's request for Due Process was dated September 17, 2018. Tehachapi's NOI was signed and dated October 2, 2018. However, Tehachapi's proof of service and file stamp indicate it was filed and served on Student and OAH on October 3, 2018, which is 16 days after it received Student's complaint. District's NOI was not filed within the statutorily required timeline. Therefore, Student's complaint is deemed sufficient.

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[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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.

DATE: October 3, 2018

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings