

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION; ANTELOPE VALLEY
UNION HIGH SCHOOL DISTRICT

OAH CASE NO. 2013090256

ORDER DENYING ANTELOPE
VALLEY UNION HIGH SCHOOL
DISTRICT'S NOTICE OF
INSUFFICIENCY

On September 09, 2013 Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request¹ (complaint) naming the Antelope Valley Union High School District (District) and the Los Angeles County Office of Education (LACOE) as respondents. On September 20, 2013, LACOE filed with OAH a response to the complaint.

On September 20, 2013, the District filed a Notice of Insufficiency (NOI) as to Student's complaint, which was granted as to District, only, with leave to amend on September 24, 2013. Student timely filed an amended complaint on October 8, 2013, which included a proof of service stating that Student served District with the complaint by facsimile on October 8, 2013. District filed an NOI with OAH on October 24, 2013.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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).

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² District filed its NOI with OAH by faxination at 10:14 p.m. on October 23, 2013, which was after business hours. Accordingly, OAH deemed the NOI filed on the next business day.

³ 20 U.S.C. § 1415(b) & (c).

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.⁴

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

⁵ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁹ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

DISCUSSION

Student's complaint was filed on October 8, 2013. District indicates in its NOI that it received Student's complaint on October 8, 2013. District's NOI was dated October 23, 2013. The proof of service states that it was served on October 23, 2013. However, the facsimile identification on each page of the NOI states that the NOI was filed with OAH on October 23, 2013 at 10:14 p.m., which was after business hours. District does not in any way set forth facts showing that the filing with OAH after business hours was caused by any factor outside of District's control, such as unavailability of OAH's "faxination" line. Accordingly, OAH deems the NOI filed on October 24, 2013, which is more than 15 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.

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: October 24, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings