BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT AND SAN DIEGO COUNTY OFFICE OF EDUCATION	OAH Case No. 2015040812 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 10, 2015, Student filed a Request for Mediation and Due Process Hearing[1] naming San Diego Unified School District, San Diego County Office of Education and Banyan Tree Learning Center.[2]

On May 13, 2015, SDCOE filed a Notice of Insufficiency as to Student's complaint. The OAH has not received a response.

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).

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]

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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 United States Code section 1415(b)(7)(A).

[2] Banyan Tree Learning Center was dismissed on May 7, 2015.

[3] 20 U.S.C. § 1415(b) & (c).

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

DISCUSSION

Student's complaint was filed on April 10, 2015, and included a signed proof of service by facsimile/email and personal delivery. SDCOE's NOI was dated, filed and served on May 13, 2015, which is more than 15 days after Student served the complaint. Although SDCOE contends that it did not receive Student's complaint until May 8, 2015, it offered no authenticated evidence supporting its contention. 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.

DATE: May 15, 2015

/s/

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings