BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017051387
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
BEVERLY HILLS UNIFIED SCHOOL DISTRICT.	

On May 30, 2017, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming the Beverly Hills Unified School District and the Tri-City Special Education Local Plan Area.[2] On June 15, 2017, District filed a notice of insufficiency as to Student's complaint. On June 20, 2017, Student filed a motion to quash the notice of insufficiency based, inter alia, on District's notice being untimely because Student personally served her complaint on District on May 26, 2017.

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 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 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 to the child; (2) facts relating to the problem; and (3) a proposed resolution

[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).

[2] Student dismissed Tri-Cities as a party on June 19, 2017, mooting Tri-Cities' NOI.

of the problem 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.)

DISCUSSION

Student's complaint was filed with OAH on May 30, 2017. The proof of service attached to the complaint, shows that Student personally served the complaint on District, as well as mailed it to District, on May 26, 2017. The proof of service is signed by Student's parent. It indicates that personal service was effectuated by Richard Manning.

On June 20, 2017, Student filed a motion to quash District's notice of insufficiency. Student included a declaration from her attorney attesting to the fact that Mr. Manning personally served the complaint on District on May 26, 2017. The declaration includes as an attachment an additional proof of service signed by Mr. Manning on May 26, 2017, which shows service on District both at its District offices and on Beverly Hills High School's principal's office. Service at both offices occurred on May 26, 2017.

The evidence therefore shows that Student personally served District at two separate locations on May 26, 2017. Based on that service, District was required to file its notice of insufficiency by no later than June 12, 2017 (accounting for the intervening weekend and a state holiday.) District's notice of insufficiency is untimely. Student's complaint is therefore 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: June 20, 2017

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings