BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COLTON JOINT UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018070313 ORDER DETERMINING COMPLAINT SUFFICIENT

On July 9, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Colton Joint Unified School District. Colton asserts it received the complaint on June 29, 2018, at 5:27 p.m. On July 17, 2018, Colton 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).)

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

[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).

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 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 July 9, 2018. Student's complaint was signed on June 29, 2018, and included a proof of service declaring the complaint was electronically served on Colton on June 29, 2018. Student did not include the time of the service. Colton indicates in its NOI that it received Student's complaint on July 2, 2018. Colton included a declaration from its attorney stating Colton received the complaint at 5:27 p.m., after business hours, on June 29, 2018. Colton included a copy of the electronic mail Student sent with the complaint that was dated June 29, 2018, at 5:27 p.m., which is after business hours therefore it is deemed that Colton received it the next business day, July 2, 2018. Colton's NOI was dated, filed with OAH, and served on July 17, 2018, which is less than 15 days after the complaint was filed with OAH, and exactly 15 days after Colton received Student's complaint. Therefore, Colton's NOI is timely.

Student's complaint raises three issues regarding Student's suspension that OAH deemed expedited. Student does not allege many facts relating to the issue, or specify that the reason the suspension documents are wrong has something do to with a disability. However, despite the lack of facts, Student's complaint raises only expedited issues which are not subject to the NOI process.

ORDER

1. The three issues alleged in the complaint are expedited therefore shall proceed to hearing on August 2, 2018, as scheduled.

DATE: July 20, 2018

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings