BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2018100140
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
ALPINE UNION SCHOOL DISTRICT.	

On October 2, 2018, Parents of behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Alpine Union School District. On November 13, 2018, Alpine Union filed a Notice of Insufficiency as to Student's complaint. On November 14, 2018, Student filed a response to the NOI, claiming the NOI to be untimely.

On November 16, 2018, OAH denied Alpine Union's motion to reset the due process hearing timelines, finding Alpine Union was aware of the Student's due process hearing request prior to October 29, 2018.

APPLICABLE LAW

The party requesting a special education due process hearing must provide the opposing party with notice of the complaint by delivering a copy of the complaint to them at the same time it is filed with OAH. (20 U.S.C. § 1415(b)(7)(A); Ed. Code, § 56501.5, subd. (c).) Service may be made via first class mail, facsimile transmission, messenger service, or personal delivery.

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

[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).

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 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 and successfully transmitted via facsimile to Alpine Union on October 2, 2018. On October 3, 2018, OAH served Alpine Union the Scheduling Order Setting Telephonic Prehearing Conference and Due Process Hearing, which reflected Student's name in the caption, the OAH case number, and advising that "OAH is in receipt of a Request for Due Process Hearing for the above student." In its NOI, Alpine Union contends that it did not receive a copy of Student's complaint until October 29, 2018. To support the NOI, Alpine Union references its letter dated November 9, 2018, requesting clarification from OAH of the due process hearing timelines. However, neither the NOI nor the November 9, 2018 letter contend that Student's service of his complaint to Alpine Union was defective nor do they provide an explanation as to why Alpine Union did not contact Student's attorney or OAH upon receiving the Scheduling Order mailed to Alpine Union on October 3, 2018, to request a copy of the complaint sooner than October 29, 2018. Furthermore, OAH determined that Alpine Union was aware of the action before October 29, 2018.

Alpine Union's NOI was dated, filed with OAH, and served on November 13, 2018, which is more than 15 days after it received or should have received Student's complaint. Alpine Union'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. The mediation, prehearing conference and hearing dates in this matter are confirmed.

DATE: November 19, 2018

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings