BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013021001 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 27, 2013 the Palos Verdes Peninsula Unified School District (District) filed a Due Process Hearing Request (complaint) naming Student.

On March 15, 2013 Student filed a Notice of Insufficiency (NOI) as to District's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] 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 (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.[2]

DISCUSSION

District's complaint was filed on February 27, 2013. The proof of service attached to the complaint shows that the complaint was served via US Mail to the parents of Student and

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[1] 20 U.S.C. § 1415(b) & (c).

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

by facsimile to Steven Wyner, Esq., attorney for Student, on February 27, 2013.[3] The proof of service for the NOI filed on behalf of Student indicates that the NOI was delivered to District's counsel by fax and personal service on March 14, 2013, which was timely. However, the NOI was sent to OAH by overnight mail. OAH did not receive the NOI until March 15, 2013, 16 days after the complaint was filed and served on Mr. Wyner. The statute requires that the NOI be *filed* with OAH within 15 days. Student's NOI was not filed within the statutorily required timeline. Therefore, District'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.

IT IS SO ORDERED.

Dated: March 18, 2013

/s/
MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings

[3] Student did not raise any argument in his NOI that the complaint was not properly served when sent to Mr. Wyner on February 27, 2013. Therefore the complaint in this matter is considered served on February 27, 2013.