

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009060162

DETERMINATION OF SUFFICIENCY
OF AMENDED DUE PROCESS
COMPLAINT

On June 2, 2009, Parent on behalf of Student (Student) filed a 24-page Due Process Hearing Request¹ (complaint) naming Elk Grove Unified School District (District) as the respondent.

On June 4, 2009, the Office of Administrative Hearings (OAH) issued a Scheduling Order, setting the following dates: July 8, 2009, for mediation; July 20, 2009 for the prehearing conference; and July 28, 2009, for the due process hearing.

On June 11, 2009, Student filed a Request for Change of Venue for the mediation and due process hearing

On June 12, 2009, District filed a Notice of Insufficiency (NOI) as to Student's complaint. On June 16, 2009, Parent filed a Rebuttal to the District's NOI, serving a copy upon the District.

On June 16, 2009, OAH issued an order entitled Determination of Sufficiency of Due Process Complaint, ruling that Student's Issue 3 was sufficient and that Student's Issues 1, 2, 4, 5 and 6 were insufficient. Student was given 14 days to file an amended pleading. Otherwise, the matter would proceed to mediation and hearing on the remaining Issue 3, in accord with the June 4 Scheduling Order.

On June 17, 2009, Parent filed a four-page form Request for Mediation and Due Process Hearing, dated June 16. The document is not entitled an amended due process and does not otherwise identify itself as an amended pleading.

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).

On June 17, 2009, OAH issued an order changing the location of the July 8, 2009, mediation from the District's offices to the OAH offices in Sacramento.

On June 26, 2009, District filed a NOI as to Student's June 16 "amended complaint." In doing so, District states it is construing the June 16 filing to be an amended pleading "out of an abundance of caution."

On June 30, 2009, Parent on behalf of Student filed a form Request for Mediation and Due Process Hearing. This pleading addresses the insufficiencies set forth in the June 16 order and has been accepted by OAH as an amendment to the pleading.

On July 2, 2009, OAH issued a new Scheduling Order, setting the following dates: 9:30 a.m., August 5, 2009, for mediation; 10:00 a.m., August 17, 2009 for the prehearing conference; and August 25, 2009, for the due process hearing.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint, within 15 days of receipt of the complaint. (20 U.S.C. § 1415(b) & (c).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A).

Similarly, a respondent may challenge the sufficiency of an amended complaint.

DISCUSSION

Student's complaint was filed on June 4, 2009. On June 12, 2009, District filed its NOI, which was granted [except as to Issue 3] by order issued June 16, 2009. Student was given 14 days within to file an amended pleading to address the insufficiencies.

The Student's filing of June 17, 2009, is a copy of the first four pages of the original filing. It is neither an amended complaint nor an amendment to complaint. Therefore, the District's June 26, 2009 NOI is inappropriate because no amended pleading was on file.

In contrast, the Student's filing of June 30, 2009, is an amendment to the complaint. The form Request for Mediation and Due Process Hearing attempts to address the insufficiencies set forth in the June 16 order and regularly refers to attachments to the initial complaint.

The Student's amendment to complaint was filed on June 30, 2009, 14 days after the June 16 NOI order.

² All statutory citations are to Title 20 United States Code unless otherwise noted.

ORDER

1. The District's June 26, 2009, Notice of Insufficiency to amended complaint is denied under section 1415(c)(2)(A) and (C) because the filing to which the NOI refers is not an amended pleading.
2. The Student's amendment to complaint of June 30, 2009, is deemed timely filed.
3. Pursuant to 1415(c)(2)(E), the applicable timelines recommenced upon the amendment's filing, as reflected in the July 2, 2009, Scheduling Order.
4. Nothing in this ruling is intended to address the sufficiency of the June 30, 2009, amendment to complaint.

Dated: July 02, 2009

/s/

CLIFFORD H WOOSLEY

ALJ

Office of Administrative Hearings