

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT, ORANGE COUNTY
HEALTH CARE AGENCY AND
CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH CASE NO. 2010110863

CORRECTED¹ ORDER OF
DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On November 22, 2010, Patricia E. Cromer, attorney for Student, filed a Due Process Hearing Request² (complaint) against the Saddleback Valley Unified School District (District), the Orange County Health Care Agency, and the California Department of Education (Department). On December 14, 2010, Epiphany Owen, attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint.³

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ The party filing the complaint is not entitled to a hearing

¹ On December 21, 2010, the Office of Administrative Hearings issued an Order of Determination of Sufficiency of Due Process Complaint in this matter. This corrected order changes the caption of the December 21, 2010 order and corrects the statement in footnote two (now footnote three) with respect to the motion to dismiss filed by the Saddleback Valley Unified School District. No other changes have been made.

² 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).

³ On December 9, 2010, the Department filed a motion to dismiss itself as a party. District, simultaneously with its NOI, filed a motion to dismiss this action. Those motions will be addressed in separate orders.

⁴ 20 U.S.C. § 1415(b) & (c).

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.⁵

DISCUSSION

Student's complaint was deemed filed by OAH on November 22, 2010, and according to Student's certificate of service, was received by District on November 21, 2010, via facsimile. District does not dispute that it received the complaint on November 22, 2010, via facsimile.⁶ Instead, it contends that because District was closed for Thanksgiving week from November 22 through November 26, 2010, it should not be deemed to have "received" the complaint until November 29, 2010, and therefore, the NOI filed on December 14, 2010, is timely. District provides no legal authority for its position. Accordingly, District's NOI is deemed to have been filed 22 days after it received Student's complaint and 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. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: December 23, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

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

⁶ November 21, 2010, was a Sunday and accordingly the next business day was November 22, 2010.