

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011110895

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On November 28, 2011, Student's parent on behalf of Student (Student) filed a request for an expedited due process hearing (complaint) naming the Fresno Unified School District (District).

On December 5, 2011, the District filed a notice of insufficiency (NOI) as to Student's complaint.

DISCUSSION

An non-expedited complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that 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(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

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's conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested and for a decision to be rendered within 10 school days of the conclusion of the hearing. With respect to expedited hearing requests, there is no provision similar to that in title 20 United States Code section 1415(c)(2), allowing for the testing of the sufficiency of an expedited hearing request. Further, even if an NOI was permissible in an expedited matter, Student pled sufficient facts to place the District on notice as to the basis for the complaint.

The District's request for a determination as to the sufficiency of the expedited complaint is denied. All dates will remain on calendar as currently set.

IT IS SO ORDERED.

Dated: December 12, 2011

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings