

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARVEY SCHOOL DISTRICT.

OAH Case No. 2016050914

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On May 20, 2016, the Office of Administrative Hearings received a complaint from Student naming Garvey School District as respondent. The complaint was accompanied by a proof of service declaring it was sent the same day via facsimile to Rene Hernandez at Garvey. On May 23, 2016, Student submitted an identical copy of the complaint with the only noticeable exception being an updated date and signature. The accompanying proof of service declared that this copy of the complaint was sent to Alma Guerrero at Garvey. On June 7, 2016, Garvey filed a notice of insufficiency as to Student's complaint.

APPLICABLE LAW

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 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

OAH received Student’s complaint and it was deemed filed on May 20, 2016. In the NOI, Garvey asserts that it received the complaint on May 23, 2016. Although OAH received a second copy of the complaint reflecting the new date and signature, that complaint was substantively identical and did not constitute nor did either party request it be considered an amended complaint. At this juncture, Student’s complaint remains filed as of May 20, 2016.

The NOI does not address the discrepancy in dates nor does it include a declaration attesting to the fact that the complaint was not received by anyone, including Ms. Hernandez, until May 23, 2016. The general statement in Garvey’s NOI indicating it received the complaint on May 23, 2016, does not overcome the initial complaint’s attached proof of service coupled with the fact that OAH received Student’s complaint on May 20, 2016. The NOI was not filed until June 7, 2016, more than fifteen days after the date the complaint was filed. Accordingly, Garvey’s NOI was not filed within the statutorily required timeline.

ORDER

1. As Garvey's NOI was untimely, 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.

DATE: June 8, 2016

DocuSigned by:

*Joy Redmon*

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JOY REDMON

Administrative Law Judge

Office of Administrative Hearings