

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009120253

ORDER ON DISTRICT'S NOI

On December 4, 2009, Student filed a Due Process Hearing Request naming Mt. Diablo Unified School District (District) as the respondent. The Due Process Hearing Request included a proof of service showing that it was served via facsimile on District's special education department and the principal of Student's high school the same day.

On December 22, 2009, District filed a Notice of Insufficiency (NOI). District's NOI did not contain any evidence establishing that the Due Process Hearing Request was not received by District on December 4, 2009. As discussed below, District's NOI must be denied because it was not timely filed.

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)¹ The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A). The complaint is deemed sufficient unless the respondent notifies the due process hearing officer (OAH) and the other party in writing, within 15 days of receiving the complaint, that the respondent believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

Student's Due Process Hearing Request was filed with OAH via facsimile at approximately 3:14 p.m. on December 4, 2009. The proof of service shows that it was also served to two different facsimile numbers attributed to the District on December 4, 2009: the special education department and the principal of Student's high school. District's NOI does not contain any evidence showing that it did not receive the Due Process Hearing Request on December 4, 2009 as reflected by the proof of service. Under these facts, District's December 22, 2009 NOI was filed more than 15 days after District received the Due Process Hearing Request. Accordingly, the Due Process Hearing Request must be deemed sufficient.

¹ All statutory citations are to Title 20 United States Code unless otherwise noted.

ORDER

1. The complaint is deemed sufficient pursuant to section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: December 23, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings