

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010060817

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On June 18, 2010, Student filed a due process hearing request<sup>1</sup> (complaint) naming Long Beach Unified School District.

On July 8, 2010, the District filed a document entitled “Notice of Demurrer and Demurrer to Due Process Complaint.” On July 12, 2010, Student filed a response to the demurrer.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> 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.<sup>3</sup>

There is no provision in either state or federal special education law for a demurrer to a due process hearing request. Special education law is very clear on the manner in which a school district can challenge a request for a due process hearing filed by a student. A school district can file a notice of insufficiency challenging

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<sup>1</sup> 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).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

whether a student's due process hearing request meets the requirements of title 20 United States Code section 1415(b)(7)(A). However, if such a notice of insufficiency is not filed within 15 days, the due process hearing request is deemed to be sufficient.

#### DISCUSSION

Student's complaint was filed on June 18, 2010. The proof of service attached to the due process complaint indicates that it was served by facsimile on the director of special education for the District on the same day. The District does not contend that it failed to receive the due process complaint on that day or that a subsequent date should be used for purposes of determining the 15 day time period. The District did not file a notice of insufficiency within 15 days of receipt of the complaint. Therefore, Student's complaint is deemed to be sufficient pursuant to Education Code section 56502, subdivision (d)(1).

The District's demurrer was not timely filed as a notice of insufficiency and was not otherwise appropriately filed under special education law. The demurrer is overruled.

#### 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: July 13, 2010

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings