

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. 2011020458

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
EXTEND TIMELINE FOR
MEDIATION AND HEARING

On February 11, 2011, Student filed a due process request (complaint) with the Office of Administrative Hearings (OAH) naming the Mt. Diablo Unified School District (District) as the respondent. On February 22, 2011, the District filed a motion to extend procedural timelines in the case based upon the fact that the District had not received the complaint until February 16, 2011. The District requests that the dates for the mediation and the hearing be extended due to its late receipt of the complaint. The District also requests that its notice of insufficiency (NOI) be filed within 15 days of February 16, when it received Student's complaint. Student has not replied to the motion.

To the extent that the District requests leave to file its NOI within 15 days of February 16, the District's request is granted.¹ The District has demonstrated that it did not receive the complaint on the date that it was filed with OAH, and it is entitled by statute to have 15 days in which to file an NOI.

However, the District has failed to demonstrate that it has suffered any other prejudice due to the fact that it received Student's complaint five days after it was filed with OAH. While the late receipt of the complaint might have affected the District's ability to file a timely NOI as to the complaint, there is no demonstrated prejudice based upon the dates that OAH has selected to schedule the mediation and hearing in this matter. There is no statutory date upon which OAH must set a mediation or hearing. If the District is not available for the mediation or the hearing on the dates presently scheduled, it may request new dates from OAH after conferring with Student's parent. Or, if Student's parent does not agree to change the dates, the District may file a motion for continuance, based upon good cause for the request.

¹ The District filed its NOI by facsimile on February 28, 2011.

The District's request to extend the timelines for the mediation and hearing in this matter is therefore granted in part and denied in part.

IT IS SO ORDERED.

Dated: March 1, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings