

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050171

ORDER DENYING MOTION TO
SHOW PROOF OF TIMELY SERVICE;
DENYING REQUEST FOR
SANCTIONS

On May 3, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming the Pasadena Unified School District (District). On May 8, 2012, Student filed a request to amend the complaint. On May 11, 2012, the District filed a Notice of Insufficiency (NOI) and response to Student’s original and amended complaint (combined complaints). On May 15, 2012, the Office of Administrative Hearings (OAH) determined that Student’s combined complaints were sufficiently pled. On June 6, 2012, Student filed a Motion to Show Proof of Timely Service of Notice of Insufficiency and Motion to Dismiss and Request for Sanctions (Student’s motion). On June 8, 2012, the District timely opposed Student’s motion.

APPLICABLE LAW

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

DISCUSSION

Here, Student asserts that he did not receive a copy of the District’s NOI until “weeks after the motions were filed”, which enjoined Student’s right to timely respond. However, the District’s NOI is accompanied by a valid proof of service showing that the NOI was

¹ 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).

² 20 U.S.C. § 1415(b) & (c).

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

properly and timely served by certified U.S. mail on May 11, 2012. In its opposition to Student's motion, the District includes a Declaration affirming that the NOI was sent to Student via certified mail on May 11, 2012. The District also included copies of the certified mail receipt, along with postal Track and Confirm documents, which show the pleading was timely sent by the District's attorney and received by the Student.

Student's argument is also moot, as a complaint must be facially sufficient. Therefore, *arguendo*, had there been a delay in the service of District's NOI, any prejudice on the Student would be *de minimis*. Student's motion is also moot because his combined complaints have been deemed sufficient by OAH, per Title 20 United States Code section 1415(b)(7)(A).

As to sanctions, the evidence does not demonstrate conduct warranting sanctions on the part of the District's attorney.

ORDER

1. Student's motion to show proof of timely service is denied.
2. Student's request for sanctions is denied.

Dated: June 11, 2012

/s/

PAUL H. KAMOROFF
Office of Administrative Hearings