

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO COUNTY OFFICE OF
EDUCATION, CALIFORNIA
DEPARTMENT OF EDUCATION, and
SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012120710

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 17, 2012, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH) naming the Sacramento County Office of Education (SCOE), the California Department of Education, and the Sacramento City Unified School District.

On January 2, 2013, SCOE filed a Notice of Insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

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

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 SCOE also filed a motion that it be dismissed as a party at the same time it filed the NOI. However, the remaining parties in the case have three business days to respond before OAH will rule on that motion.

³ 20 U.S.C. § 1415(b) & (c).

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.⁴

DISCUSSION

Student's complaint was filed with OAH on December 17, 2012. In its motion to dismiss that accompanied the NOI, SCOE contends that the complaint was not filed until December 18, 2012. However, OAH records show that the complaint was received by OAH, and thus filed, before 5:00 p.m. on December 17, 2012. The proof of service attached to the complaint shows that SCOE was served via facsimile on December 17, 2012. SCOE provides no other information to support its claim that the complaint was not filed or received by it until December 18, 2012.

SCOE did not file its NOI until January 2, 2013, 16 days following December 17, 2012. Although January 1, 2013, was a legal holiday, there is no provision in either the Individuals with Disabilities Education Act or California's implementing statutes that extends the time period for filing an NOI because there is an intervening legal holiday. Accordingly, the complaint is found to be sufficient.

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: January 3, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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