

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL  
DISTRICT, GREENFIELD UNION  
SCHOOL DISTRICT, AND KERN  
COUNTY SUPERINTENDENT OF  
SCHOOLS.

OAH CASE NO. 2014040234

ORDER DENYING BAKERSFIELD  
CITY SCHOOL DISTRICT'S NOTICE  
OF INSUFFICIENCY

On April 2, 2014, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming, among other parties, the Bakersfield City School District (Bakersfield).

On April 17, 2014, at 5:17 p.m., Bakersfield filed a Notice of Insufficiency (NOI) as to Student's complaint.

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>

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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).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.<sup>4</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.<sup>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

Although Student filed his complaint with OAH on April 2, 2014, the proof of service indicates that the complaint was served on Bakersfield by facsimile transmission on the morning of April 1, 2014. Title 20 United States Code section 1415 (c)(2)(C) specifically states that a complaint is deemed sufficient unless the other party files a notice of insufficiency within 15 days of *receiving* notice of the complaint, not within 15 days of the *filing* of a complaint. Here, Bakersfield filed its notice of insufficiency 16 days after it was served with the complaint by facsimile. Its notice of insufficiency is therefore untimely.

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<sup>4</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>5</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

<sup>8</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Since Bakersfield's NOI was not filed within the statutorily required timeline, Student's complaint is deemed sufficient as to Bakersfield.<sup>9</sup>

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.

DATE: April 18, 2014

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>9</sup> Additionally, even assuming that the 15-day time period did not begin until April 2, 2014, Bakersfield's notice of insufficiency would still be untimely as it was filed after 5:00 p.m. on April 17, 2014.