

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH CASE NO. N 2007020153

**DETERMINATION OF SUFFICIENCY
OF REQUEST FOR DUE PROCESS
HEARING**

On February 6, 2007, the Office of Administrative Hearings (OAH) received from attorney Jennifer J. Kropke a request for an expedited due process hearing on behalf of Petitioner Student pursuant to Title 20 United States Code sections 1415(k)(3)(A) and (k)(4)(B), naming Newport Mesa Unified School District (District) as respondent.¹ The basis for the request was disagreement with a Manifestation Determination and disciplinary change in placement.

On February 15, 2007, attorney Adam J. Newman filed a notice of insufficiency (NOI) on behalf of District.

APPLICABLE LAW AND DISCUSSION

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) provides for two types of due process hearings. The first, under Section 1415(b)(7)(A), permits a hearing to be requested when the local educational agency (LEA) either proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. The due process complaint must include “a description of the nature of the problem of the child relating to

¹ All statutory references are to Title 20 of the United States Code unless otherwise specified.

such proposed initiation or change, including facts relating to such problem” and proposed resolutions thereto. (Section 1415(b)(7)(A)(ii).) The IDEA permits a party to challenge the sufficiency of the due process complaint within 15 days of receiving the complaint. (Section 1415(c)(2)(A).)

Second, Section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings. Thus, an NOI cannot be granted regarding a due process complaint in an expedited hearing.

ORDER

The District’s Notice of Insufficiency is denied.

Dated: February 21, 2007

SUZANNE B. BROWN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings