

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MILPITAS UNIFIED SCHOOL DISTRICT
AND GILROY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100059

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 28, 2012, Student filed a due process hearing request¹ (complaint) naming the Milpitas Unified School District (MUSD) and the Gilroy Unified School District (GUSD) as respondents.

On October 16, 2012, MUSD 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.² 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.³

DISCUSSION

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).

Student's complaint was filed with the Office of Administrative Hearings (OAH) by facsimile transmission at 3:45 p.m. on September 28, 2012. The proof of service attached to the complaint indicates that MUSD and GUSD were served by facsimile transmission on the same day and so received Student's complaint on September 28, 2012. MUSD's NOI was filed with the OAH after 5:00 p.m. on October 15, 2012, and so is deemed filed on October 16, 2012, which is more than 15 days after MUSD received Student's complaint. MUSD's NOI was not filed within the statutorily required timeline. Therefore, Student's complaint is deemed sufficient.

IT IS SO ORDERED.

Dated: October 16, 2012

/s/

ALEXA HOHENSEE
Administrative Law Judge
Office of Administrative Hearings