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

In the Matter of: STUDENT, Petitioner, vs. SANTA ROSA CITY SCHOOLS, Respondent.	OAH No. 2006040401 **DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND ORDER**

On April 14, 2006, the Office of Administrative Hearings (OAH) received from David A. Sherman, attorney, a request for a due process hearing (Complaint), on behalf of Student, which names as the Respondent the Santa Rosa City Schools (District). On April 17, 2006, OAH received from attorney Carl D. Corbin, on behalf of the District, a Notice of Insufficiency (NOI) as to Petitioner's Complaint for not meeting the requirements of Title 20 United States Code section 1415(b)(7)(A).[1] Petitioner did not request an expedited hearing pursuant to Section 1415(k).[2]

APPLICABLE LAW

The reauthorized Individuals with Disabilities Education Act (IDEA) became effective July 1, 2005, and Section 1415, subsections (b) and (c), underwent significant amendment. Under the amended subsections, either party now has the express right to challenge the sufficiency of any due process complaint notice (Complaint) and a party filing the Complaint is not entitled to the hearing if it does not comply with subsection (b)(7)(A).

The specific subsections at issue are:

Section 1415(b)(7)(A)(ii)(I) provides that the due process complaint notice shall include the name and residence address of the child …and name of the school the child is attending.

[1] All statutory citations are to Title 20 United States Code, unless otherwise noted.
[2] District also filed a Motion to Dismiss Petitioner's Contention Two. Petitioner's response is due by April 27, 2006, and unaffected by this Order.

Section 1415(b)(7)(A)(ii)(III), which provides that the Complaint shall include "a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem;…"

Section 1415(b)(7)(A)(ii)(IV), which provides that the Complaint shall include "a proposed resolution of the problem to the extent known and available to the party at the time;"

Section 1415(b)(7)(B), which provides that a party is not entitled to a due process hearing until its Complaint meets the requirements of subsection (b)(7)(A);

Section 1415(c)(2)(D), which provides that, within 5 days of receipt of a notice of insufficiency, the hearing officer shall make a determination on the face of the Complaint whether it meets the requirements of subsection (b)(7)(A); and

Section 1415(c)(2)(E), which provides that a party may amend the Complaint only if the hearing officer grants permission, or as otherwise specified.

Section 1415(k)(1)(E)(i) provides that within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct that specified parties shall convene and review relevant information in the student's file to determine if the conduct in question "was caused by, or had a direct and substantial relationship to, the child's disability" or the child's conduct "was the direct result of the local educational agency's failure to implement the IEP."

Section 1415(k)(1)(F)(ii) provides that if the child's conduct was a manifestation of the child's disability that the local educational agency shall conduct a functional behavioral assessment and implement a behavioral intervention plan, if not already done. If the local educational agency already had developed a behavioral intervention plan, the local educational agency shall review the plan to determine the plan's adequacy. Finally, except as provided in Section 1415(k)(1)(G), the child will be returned to placement from which the child was removed, unless the parent and local educational agency agree to a change in placement.

Section 1415(k)(3)(A) states that the child's parent who disagrees with any decision regarding placement or the manifestation determination under this subsection may request a hearing.

DISCUSSION

Contention One involves Petitioner's challenge of the District's March 17, 2006 determination at an Individual Education Program (IEP) meeting to place Student at Bernard Eldridge as an interim alternative placement. The District placed student at Bernard Eldridge, apparently without a manifestation hearing, as Student is alleged to have inflicted a

"serious bodily injury" upon another person, pursuant to Section 1415(k)(1)(G)(iii). Petitioner contends that the District erred as Student did not inflict "serious bodily injury" upon another person. Section 1415(k)(3)(A) permits a parent to file an appeal as to any decision regarding placement involving an interim alternative education setting. Therefore, Petitioner may request an expedited hearing whether the District properly determined that Student inflicted a "serious bodily injury" upon another person, which, if true, allows the District to unilaterally place Student in an alternative education setting.

The District challenges the sufficiency of Contention One pursuant to Section 1415(c)(2)(B)(i)(II), asserting that this contention does not meet the notice requirements of Section 1415(b)(7)(A)(ii). However, the provisions of Section 1415(c)(2)(B)(i)(II) do not apply to Contention One as Petitioner filed this contention pursuant to Section 1415(k)(3), which does not contain a provision that allows a respondent to challenge the adequacy of a disciplinary placement appeal notice.

As to the remainder of Petitioner's Complaint, Contention Two involves whether the District provided Student's parents with proper prior notice concerning the District's proposed new placement and the reasons for the District's proposed action in the March 17, 2006 IEP. Since Contention Two involves the District's placement of Student in an interim alternative educational setting pursuant to Section 1415(k)(1)(G), this contention is governed by the appeal process in Section 1415(k)(3)(A), and not subject to District's NOI.

ORDER

1. The District's challenge to the sufficiency of Petitioner's Contentions One and Two is denied as a NOI is not applicable to Petitioner's challenge of the District's placement of Student in an interim alternative educational setting.

2. The mediation date of May 25, 2006, and the hearing date of June 8, 2006, are vacated. OAH will issue a Notice of Expedited Hearing and Mediation.

Dated: April 26, 2006

_____

PETER PAUL CASTILLO
Administrative Law Judge
Special Education Division
Office of Administrative Hearings