

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009060315

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 8, 2009, Student filed a Due Process Hearing Request (complaint) naming the Mount Diablo Unified School District (District).¹ On June 18, 2009, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The party against whom a due process complaint has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A).

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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing the party against whom a due process complaint has been filed with a specific understanding of the allegations, and sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). (See H.R.Rep. No. 108-77, 1st Sess. (2003).) In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The party against whom a due process complaint

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 All statutory citations are to Title 20 United States Code unless otherwise noted.

has been filed is entitled to know the nature of the specific allegations being made against it, such that the party may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

Student's complaint alleges that, throughout his tenure with the District, the District incorrectly determined Student was not eligible for special education. The complaint details, among other things, the grade years, District schools Student attended, and District decisions and actions during Student's tenure such as "[Student] transferred again to Northgate High School in September 2008 for his Junior year. When he transferred, his mother met with District personnel for help. Never was she offered special education assessment or told that there were other categories under which [Student] could have qualified for special education." The complaint also identifies Parents' unilateral placement, the time of placement, and alleges their notification to District.

Student alleges the issues for hearing are as follows:

- (1) Whether, prior to January 2008, District failed in its child find obligations to identify and assess Student in all areas related to his suspected disabilities, including other health impairment or emotional disturbance;
- (2) Whether, since January 2008, District failed to provide a free appropriate public education since it did not find Student eligible and provide special education services; and
- (3) Whether Parents are entitled to reimbursement for the unilateral placement.

Student's complaint sufficiently describes the nature of the problems he wants a due process hearing to address. He offers sufficient facts relating to the problems such that the District can make a specific response and participate in a resolution session and/or mediation.

Student's proposed resolutions (remedies) request, among other things reimbursement for the unilateral placement, an eligibility determination, specific eligibility categories of other health impairment or emotional disturbance, a meeting to address an individualized education program, and future placement at the current unilateral placement. Student's remedies have met the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).

2. All dates in this matter shall remain on calendar.

Dated: June 23, 2009

/s/

RALPH VENTURINO
Administrative Law Judge
Office of Administrative Hearings