

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN on behalf of STUDENT,

v.

ARVIN UNION ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2009070878

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On July 23, 2009, Christopher T. Reid, attorney for Student filed a Due Process Hearing Request¹ (complaint) against the Arvin Union Elementary School District (District). On July 31, 2009, Monica D. Batanero, attorney for the District filed a Notice of Insufficiency (NOI) as to Student's complaint. On August 5, 2009, OAH granted District's notice of insufficiency, and gave Student 14 days to file an amended complaint.

On August 19, 2009, Student filed an Amended Due Process Hearing Request (amended complaint), dated August 18, 2009. On September 2, 2009, the District filed a NOI to Student's amended complaint.

APPLICABLE LAW

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);² Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice

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.

requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

The party against whom the complaint 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 amended complaint alleges one claim, as follows:

Student alleges that the District denied her a FAPE by failing to identify her as eligible for special education and related services under the eligibility category of Emotional Disturbance for the school years (SY) of 2007-2008 and 2008-2009 to the present date. Student's claim provides the required notice to the District as to 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.

While the factual allegations in Student's amended complaint are disjointed, they are sufficient to provide the District with the required notice of the facts relating to the problem. The amended complaint sets out factual allegations identifying specific interactions between the guardian and the District regarding Student's emotional, behavioral and academic problems. It sets out factual allegations that provide information on meetings between staff and the guardian regarding Student's emotions, behaviors, academics and the assessment of Student. The amended complaint also contains facts specific to Student's behaviors and academic performance, which Student alleges should have put the District on notice that she might be eligible for special education. The amended complaint makes factual allegations regarding why Student believes the assessment completed by the District was not appropriate.

The facts alleged in Student's amended complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and sufficient facts and dates to document the problem to permit District to adequately respond to the complaint and attempt to participate in a resolution session and mediation.

Therefore, Student's amended complaint is sufficient.

ORDER

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

2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: September 8, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings