

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GRANDPARENT on behalf of STUDENT,

v.

LAKE TAHOE UNIFIED SCHOOL
DISTRICT AND EL DORADO COUNTY
MENTAL HEALTH.

OAH CASE NO. 2009031135

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On March 18, 2009, Grandparent, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Lake Tahoe Unified School District (District) and El Dorado County Mental Health (EDCMH).¹ Student also filed a request for an expedited due process hearing pursuant to Sections 1415(k)(3)(A) and (k)(4)(B).² On March 20, 2009, the District filed a Notice of Insufficiency (NOI) as to Student's complaint and request for an expedited hearing.

APPLICABLE LAW

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

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. The

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.

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.)

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. For expedited hearings pursuant to section 1415(k), there is no provision similar to that in section 1415(c)(2)(A) to test the sufficiency of a request for an expedited hearing.

DISCUSSION

Advocate Deborah B. Bloom filed the complaint and request for an expedited hearing on behalf of Grandparent, who has joint legal custody of Student along with his Mother and Father. The District asserts in its NOI that Grandparent does not have the legal authority to file this action because Mother and Father retain educational rights. However, the District only served a copy of its NOI on Grandparent and did not serve a copy on Ms. Bloom. Therefore, the District did not properly serve its NOI. (Gov. Code, § 11440.20, subd. (a); Cal. Code Regs., tit. 5, § 3089.)

ORDER

1. The District's NOI is denied.
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: March 25, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings