

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

PETALUMA JOINT UNION HIGH
SCHOOL DISTRICT AND SONOMA
COUNTY MENTAL HEALTH

OAH CASE NO. 2009070674

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On July 15, 2009, attorney Michael A. Zatopa, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Petaluma Joint Union High School District (District) and Sonoma County Mental Health (SCMH).¹ On July 27, 2009, attorney Matthew Juhl-Darlington, on behalf of SCMH, filed a Notice of Insufficiency (NOI) as to Student's 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 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.

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.

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 complaint alleges two issues against the District and SCM. The first issue involves the District's and SCM's purported denial of FAPE by not providing Student's parents with a copy of SCM's mental health assessment of Student. The second issue involves the appropriateness of the District's and SCM's offer of placement.

Regarding Issue One, Student's complaint contains sufficient factual allegations to support his claim that the District and SCM violated Student's parents' procedural rights by failing to provide parents with a copy of SCM's assessment report before the District and SCM determined that Student did not require a residential placement. SCM raises the factual contention that it did provide Student's parents with a copy of its assessment report. Determination of SCM's contention is not appropriate for a NOI, which just looks at the face of the complaint to determine its sufficiency. SCM's contention may be litigated at hearing as an affirmative defense, or may be addressed in a Motion to Dismiss supported by sufficient facts. Therefore, Issue One is sufficient to put the District and SCM on notice of the issues forming the basis of this claim.

Regarding Issue Two, Student's complaint contains sufficient factual allegations to support his claim that Student requires a residential placement to receive a FAPE due to his significant mental health needs. This claim is sufficient to put the District and SCM on notice of the issues forming the basis of this claim.

Student's proposed resolution requests a residential placement at Willow Springs in Nevada. SCM asserts that the complaint does not contain sufficient information whether Willow Springs is an appropriate placement, or if OAH could order Student's placement into Willow Springs. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint is adequately described and the issue whether OAH may order Student's placement at Willow Glen is a triable issue for hearing. Therefore, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Therefore, based on the foregoing, the issues in Student's complaint are sufficiently pled to put the District and SCM on notice as to the basis of Student's claims.

ORDER

1. The complaint is deemed sufficient pursuant to section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

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

Dated: August 4, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings