

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

GROSSMONT UNION HIGH SCHOOL  
DISTRICT & SAN DIEGO COUNTY  
MENTAL HEALTH.

OAH CASE NO. 2009090916

ORDER ON NOTICES OF  
INSUFFICIENCY AND MOTION TO  
ADD PARTIES

On September 17, 2009, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Grossmont Union High School District (District) and San Diego County Mental Health (CMH) as respondents. On September 30, 2009, Student filed a motion to add Sweetwater Union High School District and the San Diego County Office of Education as parties. The motion to add parties did not contain a proof of service showing that District and CMH received a copy. On October 2, 2009, District timely filed a Notice of Insufficiency (NOI) on the ground that the complaint fails to allege any facts regarding how the District failed to meet its special education obligations. On October 2, 2009, CMH timely filed an NOI on the ground that CMH believes that the facts show that it met its special education obligations to Student. For the reasons discussed below, the complaint is not sufficient as to District, but is sufficient as to CMH. Student will be allowed to amend the complaint to try to cure the insufficiency and to add two additional parties.

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)<sup>2</sup> 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 determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§ 1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being

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<sup>1</sup> 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).

<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

made against it, such that respondent may 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.)

As to District, District is correct that the complaint on its face does not set forth any allegations as to when or how the District violated a duty to provide Student with special education. The only allegation in the complaint related to District is that Student's Mother is a resident of the District. Accordingly, the complaint is not sufficient as to District.

As to CMH, the complaint does set forth sufficient information to put CMH on notice that Student contends that while he has been in juvenile hall within the past year he should have been provided with day treatment services and/or placement in a residential treatment center. As remedies, Student seeks release from juvenile hall and day treatment. The IDEA does not require that the proposed resolutions be reasonable or even possible. Instead, the minimal pleading standards require Student to allege a proposed resolution to the extent known at the time of filing. Moreover, CMH's factual argument, which was not supported by any admissible evidence, is not relevant to an NOI determination. Instead, sufficiency is judged solely from the face of the complaint. Here, the complaint on its face is sufficient as to CMH.

Finally, Student's request to add parties is really a request to amend the complaint. An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i)(II).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (§1415(f)(1)(B).) Here, Student's complaint on its face shows that Student at some point would need to amend to add the correct parties. Thus, leave to amend is granted.

#### ORDER

1. The complaint is sufficient as to CMH.
2. The complaint is insufficient as to the allegations against District.
3. Student has 14 days from the date of this order to file an amended complaint. The amended complaint should add allegations as to the two new parties and should correct the insufficient allegations as to CMH. If Student does not file an amended complaint within that time, the District will be dismissed and the complaint will proceed as to CMH only. If Student files an amended complaint, all applicable timelines will restart.
4. Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in amending their due process hearing request.

5. Student must serve any documents in this case on all parties. In other words, it is not enough to fax documents to OAH. Instead, Student must fax documents to the other parties and OAH. Student's filings with OAH should include a statement that the document has been served on the other parties, and provide a list of the addresses or fax numbers to which the documents were sent.

Dated: October 06, 2009

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings