

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. 2009090922

ORDER ON NOTICE OF
INSUFFICIENCY AND MOTION TO
ADD PARTIES

On September 17, 2009, Student filed a Due Process Hearing Request¹ (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, 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 insufficient. However, Student may amend the complaint to fix the insufficiency and add the new 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).) 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. (20 U.S.C. § 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. (20 U.S.C. § 1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being 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.)

Here, the complaint is insufficient on its face. The complaint references an IEP that provides for residential placement and then alleges a delay caused by a judge waiting for CMH to provide services. From the face of the complaint it is not clear what Student is

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).

alleging he was not provided by CMH or when the deprivation of special education occurred. It is not relevant that CMH argues that the complaint is not factually accurate or that the facts will show CMH did not violate Student's special education rights. Instead, sufficiency is judged solely from the face of the complaint. Here, the complaint on its face is not 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. (20 U.S.C. §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 insufficient as to CMH.
2. 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. Student may also add additional allegations as to the District. If Student does not file an amended complaint within that time, CMH will be dismissed and the complaint will proceed as to the District only. If Student files an amended complaint, all applicable timelines will restart.
3. 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.
4. 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/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

