

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2009100190

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On September 30, 2009, Parent, on behalf of her son Student, filed a Due Process Hearing Request¹ (complaint) naming West Contra Costa Unified School District (District).

On October 29, 2009, attorney Jennifer Rowe, on behalf of District, filed a Motion to Dismiss, alleging Student had failed to serve District with the complaint. Office of Administrative Hearings (OAH) received no response to the Motion to Dismiss. On November 19, 2009, OAH denied District's motion to dismiss. Student was allowed to fix the defect and serve the complaint within 14 days. On November 30, 2009, Student served the complaint on District. OAH reset the time lines based upon the date of service.

On December 2, 2009, attorney Jennifer Rowe, on behalf of District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

On December 7, 2009, Parent, on behalf of Student, filed an amended complaint before OAH ruled on District's NOI.

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. (20 U.S.C. §§ 1415(b)(7)(A)(ii)(III), 1415(b)(7)(A)(ii)(IV);² Ed. Code, § 56502, subd. (c)(1).)

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 complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the 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.

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 filed an amended complaint before a ruling was made on the District's NOI. Since the amended complaint is now the operative pleading in this matter, the NOI for the original complaint is moot.

ORDER

The NOI is denied.

Dated: December 09, 2009

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings