

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

WEST SONOMA COUNTY UNION HIGH
SCHOOL DISTRICT, AND MONTE RIO
UNION ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2009101073

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On October 19, 2009, Parent, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) against the West Sonoma County Union High School District (WSCUHSD), and the Monte Rio Union Elementary School District (MRUESD). On October 28, 2009, Carl D. Corbin, attorney for MRUESD, filed a Notice of Insufficiency (NOI) as to Student's complaint. On October 29, 2009, Summer D. Dalessandro, attorney for WSCUHSD, filed a NOI as to Student's complaint. This order addresses both NOIs.

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.

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

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.

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 that he is currently placed at a nonpublic school, which includes residential placement. Student alleges that due to a failure to pay his mental health supplemental fees dating back to July 2008, Student is at risk of losing his placement. Student has sufficiently identified a problem.

However, the complaint fails to provide any factual basis for the stated problem. Student fails to identify the roles of each public agency he has named in the complaint, or allege facts that would identify the acts of omissions of each party as they related to the stated problem. Without further factual allegations, Student's complaint is insufficiently pled in that it fails to provide WSCUHSD, and MRUSD with the required notice of a description of the problem and the facts relating to the problem.

As discussed above, a respondent is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

Proposed Remedy

For a remedy, Student states that the issue needs to be resolved. Student seeks continued placement at his current nonpublic school, and residential facility. 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 sufficiently defined to provide the required notice. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and MRUSD, and WSCUHSD's notices of insufficiency are granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

3. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (See Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request

Dated: November 2, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings