

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MODESTO CITY SCHOOLS and
STANISLAUS COUNTY BEHAVIORAL
HEALTH AND RECOVERY SERVICES.¹

OAH CASE NO. 2009090763

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On November 25, 2009, the Office of Administrative Hearings (OAH) granted a request by Student to file an amended request for due process hearing (complaint). The order stated that the filing date of the amended complaint for all purposes would be the date of the order. On December 11, 2009, attorney Van Vu, on behalf of Stanislaus County Behavioral Health and Recovery Services (Behavioral Health), filed a notice of insufficiency (NOI).

APPLICABLE LAW

A party against whom a complaint has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A).

The complaint is deemed sufficient unless the respondent notifies the due process hearing officer (OAH) and the other party in writing, within 15 days of receiving the complaint, that the respondent believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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

¹ Counsel for Stanislaus County Behavioral Health and Recovery Services has requested that the caption of pleadings in this matter reflect this name, rather than the previous designation of Stanislaus County Department of Mental Health.

² All statutory citations are to Title 20 United States Code unless otherwise noted.

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 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 sent his request to file an amended complaint, and a copy of the amended complaint, to the District and Behavioral Health on November 17, 2009, according to the proof of service attached to the pleadings. OAH's order allowing the filing of the amended complaint clearly states that "The amended complaint is deemed filed on the date of the order[.]" and "All applicable timelines shall recommence as of the date of this order." The date on the order is November 25, 2009.

Behavioral Health's NOI was filed on December 11, 2009, which is more than 15 days after the complaint was filed. Behavioral Health's NOI was not filed within the statutorily required timeline. Therefore, pursuant to the statutory authority cited above, Student's complaint is deemed sufficient.

Dated: December 15, 2009

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings