

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Parent on behalf of Student,

v.

ANAHEIM UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2008100494

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On January 26, 2009, Jack Anthony, Esq. filed an Amended Due Process Hearing Request (complaint), on behalf of Student, against the Anaheim Union High School District (District).¹ On February 10, 2009, attorney Jeffrey J. Riel, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named party to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c)²; Ed. Code, § 56502, subd. (d)(1).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A). (Ed. Code, § 56502, subd. (c)(2).)

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. The respondent is entitled to know the nature of the specific allegations being made against it, such that respondent 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

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.

Student's complaint alleges eight issues against the District. Student alleges sufficient facts in Issue One that the District failed to assess him all areas of suspected disability, especially autism, Attention Deficit Hyperactivity Disorder, hearing loss and working memory. Regarding Issue Two, Student sufficiently alleges that Parent requested Independent Education Evaluations (IEEs) and the District failed to perform the requested IEEs and did not file a due processing hearing to dispute the IEE request. The complaint contains adequate allegations in Issue Three that the District's October 20 and November 20, 2006 Individualized Education Program (IEPs) did not provide Student with a FAPE.

Regarding Issue Four, Student alleges sufficient facts that the District performed an adaptive physical education assessment (APE) without Parent's consent, and failed to consider the information from the APE assessment at the January 31, 2008 IEP meeting. The complaint contains adequate allegations in Issue Five that the District has never provided Student with transition services. In Issue Six, Student asserts sufficient facts that the District held the April 27, 2007 IEP meeting without providing Parent with proper notice of the meeting.

Regarding Issue Seven, the complaint contains adequate allegations that the District did not conduct an agreed-upon vision assessment. Student alleges sufficient facts in Issue Eight that Student presented the District with IEEs on October 28, 2008, and the District has not convened an IEP meeting to discuss the IEEs. Finally, Student's proposed resolution regarding compensatory education is sufficiently specific, as Student is not required to detail the hours and how the requested services are to be delivered.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and sufficient facts and dates to document the problem to permit the District to adequately respond to the complaint and attempt to participate in a resolution session and mediation. Therefore, Student's complaint is sufficient.

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: February 18, 2009

/s/

PETER-PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings