

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009020283

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 7, 2009, Parent, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) against the Castro Valley Unified School District (District). On February 13, 2009, attorney Jacqueline D. Berryessa, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint. Student filed a response on February 17, 2009.

APPLICABLE LAW

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the due process hearing officer, the Office of Administrative Hearings (OAH), and the other party in writing, within 15 days of receiving the complaint, that the party against whom the complaint was filed believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C)²; 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 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 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.

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.

(*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 four issues against the District that involve the location of Student's placement and mainstreaming services. Issue One is insufficiently pled because Student does not allege sufficient facts in Issue One regarding her request to attend her neighborhood school. Student needs to allege in the complaint why her present placement is not the least restrictive environment and why she should attend her neighborhood school.

Issue Two is insufficiently pled because Student does not allege sufficient facts to describe in what ways the District is presently not providing Student with adequate socialization with her non-disabled peers, or what District should be providing.

Issue Three is insufficiently pled because Student does not allege sufficient facts to describe the transition services, if any, that the District currently provides Student, why the transition services are not adequate to meet Student's needs, or what transition services Student requires to meet her needs.

Finally, Issue Four is insufficiently pled because Student fails to allege in Issue Four the level of supervision that the District presently provides Student in and out of her classroom, and fails to state the reasons why this level of supervision is not adequate to meet her unique needs.

As discussed above, a responding party 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 responding party may be able to prepare a response, prepare for a resolution session, 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).

Pursuant to Education Code section 56505, subdivision (e)(6), 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. If Parents request the assistance of a mediator, they should contact OAH immediately in writing.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and the District's notice of insufficiency is granted.

2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³

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.

Dated: February 18, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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