

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009020321

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 10, 2009, Parent, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) against the Chino Valley Unified School District (District) and the California Department of Education (CDE). On February 18, 2009, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

A February 23, 2009, Determination of Sufficiency of Due Process found Student's complaint to be insufficiently pled. The order provided Student 14 days within which to file an amended complaint.

On March 9, 2009, the Office of Administrative Hearings granted CDE's Motion to Dismiss and ordered CDE dismissed as a party. District remains as the sole respondent.

On March 9, 2009, Parent, on behalf of Student, filed another Due Process Hearing Request naming District as the only other party. The Office of Administrative Hearings deemed this second complaint to be an Amended Due Process Hearing Request (amended complaint), as permitted by the February 23, 2009 order.

On March 13, 2009, Jean Martin, Ph.D., Program Manager for the West End SELPA, filed a Notice of Insufficiency (NOI) on behalf of the District as to Student's amended complaint. On March 17, 2009, Parent filed a letter stating that he had not received a copy of the NOI. While a response to an NOI is not necessary, it should be served. Out of an abundance of caution, OAH will send Parent a copy of the NOI along with this order.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the

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).

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).

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).)

The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f).

In addition, fundamental principles of due process apply to administrative proceedings in special education matters. 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.)

Though sufficiency review is triggered by a respondent's notice (1415(b)(2)(A) & (C)), and a petitioner may respond, the hearing officer shall make a sufficiency determination on the face of the request for due process hearing (Ed. Code, § 56502, subd. (d)(1)).

DISCUSSION

The Claims

Student's amended complaint is divided into 11 sections. The statements in section 1 through 7 contain few identifiable factual assertions. However, sections 8 through 11 allege facts sufficient to put the District on notice.

Student's statements of claims in sections 1 through 7 are insufficient

Student generally alleges in sections 1 through 7 that District failed to meet its Child Find obligations by timely and properly assessing Student for eligibility. Student accuses District of having Student "5150d as allegedly suicidal."³ Student also states that District

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

³ "5150d" refers to California Welfare and Institutions Code section 5150 et seq., which allows a qualified officer or clinician to involuntarily confine a person deemed a danger to others, or to himself or herself, or is gravely disabled.

should have assessed Student and found Student eligible for special education services. Student does not assert sufficient facts or dates which support the general contention or from which the District can reasonably be expected to fashion a cogent response.

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. The IDEA does not require that person or entity filing a claim plead facts with particularity but rather the requirement, in essence, is to file a short and plain statement of the cause of action and the grounds upon which it rests. In other words, the claim must answer the questions who (i.e. the district), what (what are you claiming), how (what are the important facts regarding your claim/the grounds) and when (timeframe). Sections 1 through 7 of Student's amended complaint fails to provide this notice.

For the reasons described above, sections 1 through 7 of the amended complaint are insufficient because they do not comply with the requirements of Section 1415(b)(7).

Student's statements of claims in sections 8 through 11 are sufficient.

In section 8, Student refers to an initial individualized education program (IEP) meeting, held on January 24, 2008. Student asserts that the IEP team provided a non-public school placement. Student further asserts that the placement failed and that the District has not properly accommodated Student's unique needs in making a proper placement offer. Accordingly, Student claims the January 24, 2008 IEP team denied student a free and appropriate public education (FAPE).

In section 9, Student asserts that at the September 3, 2008 IEP, District promised to send Student a letter related to his safety. Student states District did not do so and, at the next IEP in October, 2008, the District "refused to do so in violation of the law." Section 9 reads that the District's letter was or should have been part of the Student's IEP but that District either refused to perform or declined to include in the IEP.

In section 10, Student refers to an annual IEP held February 2, 2009. Student again asserts that the IEP team did not make a proper placement offer and was denied a FAPE.

In section 11, Student accuses District of withholding two sets of records: January through March 2007 (related to Student's home instruction), and April 5 through October 2007. Student claims the District's refusal to produce these records deprived Parent documentation "essential to developing a successful IEP." As a consequence, Student asserts that the District profited from Parent's lack of documentation.

In sections 8 through 11, Student identifies the issues with sufficient facts and dates to define the what, the how and the when of the problems. The District is able to adequately respond to the amended complaint, to participate in a resolution session, partake in mediation, and defend at a due process hearing.

For the reasons above, sections 8 through 11 are sufficient.

Proposed Resolutions

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).) Student proposes 4 resolutions in the amended complaint.

Resolution 1 is a request for an order that District “be denied any power to frighten [Student] any longer.” This request is not a resolution directly related to any of the sufficiently pled claims, is not well-defined, fails to meet the statutory standard and is not a remedy that OAH can award.

Resolution 2 requests a placement, with counseling and support sufficient to take Student “on the shortest road to a GED.”⁴ The proposed placement includes community college. This resolution is not well-defined but it meets the statutorily required standard of stating a resolution, to the extent known and available to the party at the time.

Resolution 3 requests that District change Student’s school records to remove allegedly unfounded and defamatory statements. This resolution fails to meet the statutory standard, is not related to a sufficiently pled claim, and is not available to the party as it is not a remedy that OAH can award.

Resolution 4 requests that District produce the records referred to in section 11. This resolution is well-defined and meets the statutorily required standard of stating a resolution, to the extent known and available to the party at the time.

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 in identifying the issues, they should contact OAH immediately in writing.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student’s statements of claims in sections 1 through 7 are insufficient.
2. Pursuant to section 1415(b)(7)(A)(ii) Student’s statements of claims in sections 8 through 11 are sufficient.

⁴ “GED” refers to the General Educational Development Test that may be taken by students 18 years old and older for the purpose of receiving the California High School Equivalency Certificate.

3. Pursuant to section 1415(b)(7)(A)(ii)(IV), proposed resolutions 1 and 3 fail to meet the statutory standard.

4. Pursuant to section 1415(b)(7)(A)(ii)(IV), proposed resolutions 2 and 4 meet the statutory standard.

5. Pursuant to section 1415(c)(2)(E)(i)(II), Student may file an amended complaint to correct the enumerated deficiencies in sections 1 through 7.

6. 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.

7. If Student fails to file a timely amended complaint, the hearing shall proceed only on Student's statements of claims 8 through 11 and proposed resolutions 2 and 4.

8. The presently assigned dates for mediation, prehearing conference, and due process hearing are to remain as calendared.

9. Should Student timely file an amended complaint, all dates set in this matter will be vacated pursuant to section 1415(c)(2)(E)(ii)(II), which provides that the filing of an amended complaint will restart the applicable timelines for a due process hearing

Dated: March 16, 2009

/s/

CLIFFORD H WOOSLEY
ALJ
Office of Administrative Hearings