

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PASADENA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009020742

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On February 24, 2009, attorney Paige R. Parrish, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Pasadena Unified School District (District).<sup>1</sup> On March 11, 2008, attorney Sharon A. Watt, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint. The Office of Administrative Hearings (OAH) granted the NOI on March 12, 2009, and gave Student 14 days to file an amended complaint.

On March 25, 2009, Student filed an amended complaint. On April 8, 2009, the District filed a NOI as to the amended complaint. OAH granted the District's NOI to amended complaint on April 10, 2009, and gave Student 14 days to file another amended complaint.

On April 24, 2009, Student filed a second amended complaint. On May 8, 2009, the District filed a NOI as regards to the second amended complaint.

APPLICABLE LAW

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the due process hearing officer of 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).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

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<sup>1</sup> 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).

<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

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. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

The statute of limitations for due process complaints in California precludes claims that occurred more than two years prior to the date of filing the request for due process. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

## DISCUSSION

Student's complaint alleges three claims against the District regarding its purported failure to provide Student with adequate resource specialist, assistive technology (AT) and occupational therapy (OT) services.

Regarding Problem One, Student's claim is that the District denied her a FAPE because it failed to provide her with adequate resource specialist services. This claim is sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of the claim because the complaint contains allegations regarding Student's Individualized Educational Programs (IEPs) between August 5, 2005 through October 17, 2007, and why she required additional resource specialist services to make meaningful educational progress.

The District also asserts that Student's claims in Problem One that occurred before February 24, 2007, are barred by the two-year statute of limitations. However, Student alleges sufficient facts to toll the statute of limitations because the District allegedly informed Student's parents in March 2007 that it had resolved the issue, which caused parents not to file a request for a due process hearing. (Ed. Code, § 56505, subd. (1).)

Regarding Problem Two, Student's claim is that the District denied her a FAPE because the District has not provided her with AT services during the 2007-2008 and 2008-2009 school years. This claim is sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of the claim because the complaint contains

allegations why Student requires AT services to meet her unique needs and to make meaningful educational progress.

Regarding Problem Three, Student's claim is that the District denied her a FAPE because the District has not provided her with OT services during the 2007-2008 and 2008-2009 school years. This claim is sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of the claim because the complaint contains allegations why Student requires OT services to meet her unique needs and to make meaningful educational progress.

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: May 13, 2009

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings