

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009050028

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On April 30, 2009, attorney Robert Ehrenworth, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Tustin Unified School District (District).<sup>1</sup> On May 15, 2009, attorney Jennifer C. Brown, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's 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 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);<sup>2</sup> 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.

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.)

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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.

## DISCUSSION

Student's complaint alleges two problems regarding the adequacy of the District's April 2, 2009 Individualized Educational Program (IEP) and his one-to-one aide. Regarding Problem One, Student's complaint does not contain sufficient factual allegations explaining how the April 2, 2009 IEP fails to provide him with a FAPE and, therefore, does not provide District with the required notice. Specifically, Student does not allege why he requires a positive behavior support plan to address his disruptive behaviors or why the District's offer of a lower-level special day class is not appropriate to meet his unique needs.

Regarding Problem Two, Student alleges that the conduct of his one-to-one aide prevents him from accessing his curriculum. This claim is sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of the claim.

As a proposed resolution for Problem Two, Student requests that OAH order the District to assign a new aide. However, Student's proposed resolution is not adequate because OAH does not have the legal authority over a district's personnel decisions. Therefore, Student does not allege a sufficient proposed resolution.

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 meeting, 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).

## 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.<sup>3</sup>
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.

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

5. All dates previously set in this matter are vacated.

Dated: May 20, 2009

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings