

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

Student filed a First Amended Due Process Hearing Request¹ (complaint) on June 2, 2009. The first issue in the complaint alleged that Student's current behavioral aide at school is not using positive behavioral supports and that as remedies the District should train the staff and conduct a behavioral analysis. Student's second issue alleged that at a recent IEP the District unjustifiably proposed changing Student's placement to a more restrictive SDC and as a remedy seeks additional supports to keep Student in the least restrictive environment. On June 12, 2009, the District timely filed a Notice of Insufficiency (NOI). For the reasons set forth below, the complaint is sufficient.

The respondent to a due process hearing request has the right to challenge the 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 determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§ 1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being made against it, such that respondent may 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.)

Here, Student's allegations clearly set forth two "problems" that are supported by factual allegations and requested remedies. The IDEA does not require more.

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.

The complaint is deemed sufficient pursuant to section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1). All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

IT IS SO ORDERED.

Dated: June 16, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings