

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009060162

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On June 2, 2009, Parent on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Elk Grove Unified School District (District) as the respondent.

On June 12, 2009, Cathy S. Holmes, Esq., on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

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).)<sup>2</sup> 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). (See H.R.Rep. No. 108-77, 1st Sess. (2003) [the House Committee on Education and the Workforce stated that the requirement of a clear and

---

<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.

specific notice is essential to make the complaint process work in a fair and equitable manner]; Sen. Rep. No. 108-185, 1st Sess. (2003) [the Senate Committee on Health, Education, Labor and Pensions stated that the purpose of the sufficiency requirement is to ensure that the respondent will have an awareness and understanding of the issues forming the basis of the complaint, to prevent the respondent from having to prepare for any and every issue that could possibly be raised, and to give the respondents sufficient information to provide specific responses and to participate in resolution sessions and mediation].) 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.)

## DISCUSSION

Student's complaint alleges six issues, as follows:

Issue One: Student contends that the District dropped occupational therapy (OT), physical therapy (PT) and adaptive physical education (APE) from his services when he transferred into the District. Further, the District has failed to assess Student in these areas for six years. Student's first issue is insufficient, as it provides no dates as to when the services were allegedly dropped from Student's IEP, or when the services were requested or should have been provided. Student's complaint further fails to include sufficient facts to determine which IEP has allegedly been violated, or what specific services should have been provided.

Issue Two: Student contends that the District's attempt to provide Student with speech and language services (S/L) on campus was inappropriate. Student's second issue is insufficient as it fails to indicate when Student was placed on Home/Hospital Instruction (HHI); when the alleged S/L services were offered; and when S/L services became impossible. Further, Student fails to indicate which IEP offered the S/L services in question; what specific S/L services were offered; and, specifically, why Student could not participate in the services.

Issue Three: Student contends that he has been injured several times on campus. Student's third issue is sufficiently pled as follows<sup>3</sup>: The District failed to provide appropriate placement and services for Student after May 16, 2007, due to alleged physical and emotional abuse from Student's classroom teacher. Said alleged abuse caused significant physical and emotional trauma to Student, and resulted in Student being behaviorally and emotionally unable to attend school. Student's facts regarding the alleged incidents and the subsequent IEP meetings are contained in the complaint's narrative which provides sufficient information to place the District on notice of Student's claim. The

---

<sup>3</sup> The determination of sufficiency of Student's third claim is made without reference to any statute of limitations claims.

proposed resolution stated in Student's complaint requesting private school placement with a 1:1 aide is sufficiently defined to meet the statutorily required standard of stating a resolution to the extent known and available to him at the time. The remainder of Student's third claim fails to provide a factual connection of any of the alleged incidents to a denial of FAPE.

Issue Four. Student contends that the District failed to provide modifications. Student's fourth issue is insufficient as it fails to allege any facts to support the claim.

Issue Five. Student contends that the District failed to complete assessments in spatiality, sequential memory and auditory processing problems. Student's fifth issue is insufficient as it fails to indicate when the assessments were requested, or why the District is obligated to administer those assessments.

Issue Six. Student contends that the District failed to have the classroom teacher provide Student with an apology. While Student's sixth issue may represent a resolution, it is insufficient as a legal issue as it fails to allege any violation of the IDEA or related law.

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. Student's complaint fails to provide this notice on all claims except as defined in paragraph three. For the reasons described above, with the exception of Issue Three, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

## ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Student's Issue Three, as defined in paragraph three above, is sufficient.
2. Pursuant to section 1415(c)(2)(D), Student's Issues 1, 2, 4, 5 and 6 are insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.<sup>4</sup>
4. 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.

---

<sup>4</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Student's Issues Three.

Dated: June 16, 2009

/s/

---

JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings