

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009061085

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On August 14, 2009, Parents, on behalf of Student, filed an amended Due Process Hearing Request (amended complaint) against the Morgan Hill Unified School District (District).¹ On August 28, 2009, attorney Tracy L. Tibbals, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's amended complaint.

APPLICABLE LAW

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);² Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); 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.

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.)

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.

DISCUSSION

Student's amended complaint contains 22 issues for hearing that date from the June 2, 2007 individualized educational program (IEP) meeting through June 2, 2008. The issues involve whether the District's failed to provide Student with adequate services to meet his unique needs, failure to provide agreed upon services and failing to develop adequate goals. Student's amended complaint also alleges numerous procedural violations regarding the District's purported failure to have required persons attend IEP meetings and not considering information Student's parents presented during the IEP process.

Regarding the 22 issues for hearing, Student's amended complaint contains sufficient factual allegations as to each issue alleged because the amended complaint identifies the IEPs at issue, Student's unique needs and how the District failed to address Student's unique needs. Additionally, Student's amended complaint identifies the services that the District allegedly failed to provide and when this occurred. Finally, Student's amended complaint adequately identifies the District's purported procedural violations and how these denied Student's parents a meaningful opportunity to participate in Student's educational decision-making process. These claims are sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of these claims.

The District contends that Issues One through Six should be dismissed because these claims are outside the two-year statute of limitations. The District also contends that Student alleges in several issues that the District denied him non-special educational services. An NOI is not the proper means by which to seek determination of the District's contentions, as the only determination to be made upon the filing of an NOI is the sufficiency of the complaint on face. The District's contentions may be litigated at hearing as an affirmative defense, or may be addressed in a Motion to Dismiss supported by sufficient facts.

Student's issues for hearing are sufficiently pled to put the District on notice as to the basis of Student's claims.

ORDER

1. The amended complaint is deemed sufficient pursuant to section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: September 1, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings