

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CASCADE UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2009061129

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 23, 2009, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent. On July 1, 2009, District timely filed a Notice of Insufficiency (NOI). As discussed below, a review of the face of the complaint shows that it 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, the complaint more than adequately meets the above requirements. Student alleges that she was denied a free appropriate public education during the 2007-2008 school year because: 1) the placement was inappropriate because of disability-based harassment; 2) the placement was inappropriate because it did not provide educational benefit in math and language arts; 3) Student required, but was not provided, real-time captioning with a trained interpreter; and 4) District failed to consistently provide sign language interpretation. Student has set forth facts related to the above allegations, including the terms of the operative IEP. As to remedies, the express language of the IDEA does not require any

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.

factual allegations showing a “nexus” between the proposed resolutions known to Student at the time of filing and the alleged violations of FAPE. The complaint meets all IDEA pleading requirements.

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: July 1, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings