

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009070196

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On July 2, 2009, attorney Barbara Dixon, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Rialto Unified School District (District).<sup>1</sup> On July 14, 2009, East Valley Special Education Local Planning Area Program Manager, Gail Lindberg, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's 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);<sup>2</sup> 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.)

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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 four issues against the District. The issues involve the District's purported failure to timely assess Student for special education eligibility and its decision that Student is not eligible to receive special education services.

Regarding Issue One, Student's complaint contains sufficient factual allegations to support his claim that Student is eligible for special education services under the category of either other health impaired or specific learning disability. The arguments raised in the District's NOI are factual disputes to be raised at hearing, and not in a NOI. In ruling on an NOI, the ALJ looks at the face of the complaint to determine its sufficiency, and does not resolve factual disputes. This claim is sufficient to put the District on notice of the issues forming the basis of this claim.

Regarding Issues Two and Three, Student's complaint contains sufficient factual allegations to support his claims that the District denied Student a FAPE by not providing him with special education services because of the District's denial of special education eligibility for Student, and the resulting denial of special education services the District should have provided Student if he had been determined to be eligible for special education services. These claims are sufficient to put the District on notice of the issues forming the basis of the claims.

Regarding Issue Four, Student's complaint contains sufficient factual allegations to support his claims that the District failed to assess him in all areas of suspected disability, that the District did not assess Student timely after his parent's assessment request, and that Student is entitled to an independent educational evaluation at public expense. These claims are sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of the claims.

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 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: July 20, 2009

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings