

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT

OAH CASE NO. 2009070628

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On July 13, 2009, Parent, on behalf of Student (Student), filed a Due Process Hearing Request¹ (complaint) naming San Diego Unified School District as the respondent.

On July 20, 2009, Patrick D. Frost, Esq., counsel for 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).)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 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 specific notice is essential to make the complaint process work in a fair and equitable

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.

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.)

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).)

DISCUSSION

Student's complaint presents one issue in which she alleges that Student's Individual Education Plan (IEP) goals are not being met, and Student's personal needs are not being met daily. Student proposes that the District hire aides that can help out daily and have a better schedule for the kids (sic).

Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. Student has failed to alleged facts describing the IEP which contain the alleged goals; which specific goals are not being met; and how the goals are not being met. Additionally Student has failed to allege facts describing which of Student's personal needs are not being met and why the District is responsible for Student's daily needs.

Student's proposed resolution[s] request that the District hire aides that can help out daily and have a better schedule for the kids. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. The proposed resolution stated in Student's compliinat is unsupported by the facts contained in the complaint. As example, Student requests a better schedule for the kids, but provides no facts describing what is wrong with the District's schedule or what specifically needs to be changed in the schedule.

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. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and the District's notice of insufficiency is granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.
6. Pursuant to Education Code, section 56505, subdivision (e)(6), upon the request of a parent who is not represented by an attorney, OAH shall provide a mediator to assist the parent in identifying the issues and the proposed resolutions of the issues. Should Parent desire the assistance of a mediator, Parent must contact OAH at (916) 263-0880 immediately upon receipt of this Order.

Dated: July 23, 2009

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.