

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ARVIN UNION ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2009070878

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On July 23, 2009, Christopher T. Reid, attorney for Student , filed a Due Process Hearing Request¹ (complaint) naming Arvin Union Elementary School District (District).²

On July 31, 2009, Monica D. Batanero, attorney for the District, file a Notice of Insufficiency (NOI) as to Student’s complaint.

APPLICABLE LAW

The party responding to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)³ 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); Ed. Code § 56502, subd. (c)(1).) 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

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 It is requested that all further pleading prepared on behalf of Student be written in complete sentences.

³ All statutory citations are to Title 20 United States Code unless otherwise noted.

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 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 presents two allegations as follows:

1. Allegation One contends that the District denied Student a free appropriate public education (FAPE) for the 2007-2008 school year and the 2008-2009 school year by failing to find Student eligible for special education and related services under the category of emotional disturbance (ED). Student thereafter presents a series of phrases in outline form intended to suffice as "facts supporting allegation 1." These phrases, however, fail to provide the reader with any content or definition of what, when, where or how they relate to Student's allegation. Most importantly, Student provides no description of Student's behaviors which would suggest that Student qualified for special education and related services under the very specific educational criteria of ED.

2. Allegation Two contends that the District denied Student a FAPE by failing to assess Student in "all areas of suspected disability," specifically ED, from January 10, 2008 to the present date. Again, Student's "factual support" is provided in outline form, creating the same problems as described for Allegation One. Again, Student provides no factual allegations to indicate that Student's behavior at school required additional behavioral assessment or intervention.

3. Additionally Student has alleged no factual basis or nexus for her requested remedies. As example, Student has requested reimbursement for an independent expert evaluation (IEE), yet has provided no factual allegations or legal basis to justify such reimbursement. Student's justification for other requested remedies contain similar flaws.

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.

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.⁴
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.

Dated: August 5, 2009

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

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