

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009080248

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On August 7, 2009, attorney Margaret M. Broussard, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Elk Grove Unified School District (District).<sup>1</sup> On August 21, 2008, attorney Cathy S. Holmes, 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 three issues against the District. The issues involve the District's purported denial of FAPE by not offering Student a placement and services that adequately addressed his unique needs, District's failure to provide Student with a full school day, and Student's parents' request for an independent educational evaluation (IEE).

Regarding Issue One, Student's complaint contains sufficient factual allegations to support his claim that during the 2008-2009 school year (SY) that the District denied him a FAPE by only providing a shortened school day for the convenience of the District. Further, Student alleges adequate facts that the District failed to adequately address his unique needs regarding his functional life, pre-academic and functional communication skills. These claims are sufficient to put the District on notice of the issues forming the basis of these claims.

Regarding Issue Two, Student's complaint contains sufficient factual allegations to support his claim that the District's offer for SY 2009-2010 denied him a FAPE because the District only offered a shortened school day for the convenience of the District, and did not adequately identify the proposed placement for Student in the June 17, 2009 individualized educational program. Additionally, Student alleges adequate facts that the District's offer of placement and services failed to adequately address his unique needs by not using American Sign Language to communicate with Student during the entire school day. These claims are sufficient to put the District on notice of the issues forming the basis of these claims.

Regarding Issue Three, Student's complaint contains sufficient factual allegations to provide the required notice to District because the complaint adequately identifies the District's assessments that Student's parents expressed disagreement. This claim is sufficient to put the District on notice of the issues forming the basis of this claim.

Therefore, based on the foregoing, the issues in Student's complaint 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: August 25, 2009

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