

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009090866

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On September 11, 2009, Parent, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH) naming Los Angeles Unified School District (District) as the respondent. On September 22, 2009, the District filed a Notice of Insufficiency] (NOI) as to Student's complaint.

APPLICABLE LAW

A party against whom a due process complaint has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c); Ed. Code § 56502, subd. (d)(1).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A) and Education Code section 56502, subdivision (c)(1). Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

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); 2 Ed. Code, § 56502, subd. (c)(1).) 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.)

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.

DISCUSSION

Student filed the complaint because she is dissatisfied with the middle school where she has been assigned, and she wants to attend a different middle school. Both schools are in the District. Student claims that she does not want to attend her assigned middle school because it is unsafe for her, her friends attend the other middle school, and the teacher of two of her classes at the assigned school is difficult to understand. However, there is no allegation that she will not receive a FAPE if she attends the school where she has been assigned. Even if the complaint were construed as alleging a denial of FAPE, it is still insufficiently pled. For example, Student does not describe whether she was assigned to the school pursuant to an IEP, and if so, the date of the IEP. In addition, Student does not describe her special needs and does not provide factual allegations as to why the assigned school will not meet these needs.

As discussed above, a party against whom a complaint is filed 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 party 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) and Education Code section 56502.

At the parent's request, a mediator may be appointed to assist a Student who does not have an attorney, to identify issues and proposed resolutions for hearing. (Ed. Code, § 56505, subd. (e)(6).) If Student's parent would like the services of a mediator to assist in this matter, she should make that request to OAH.

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 no 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.

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

5. All dates previously set in this matter are vacated.

Dated: September 23, 2009

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings