

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAUGUS UNION SCHOOL DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009101061

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On October 20, 2009, Saugus Union School District (District) filed a Due Process Hearing Request (request) naming Student as the respondent. The request set forth two problems: 1) Whether District may assess Student under an October 1, 2009 assessment plan without parental permission; and 2) Must Student make himself available for assessment in order to continue to receive special education. The request was supported by factual allegations showing that the District suspects Student may have unassessed social/emotional needs based on a parent report of ADHD and Student's behaviors at school. The request included proposed resolutions to both problems. Student's parents timely filed a Notice of Insufficiency (NOI) on October 28, 2009. As discussed below, the complaint meets the notice requirements of the IDEA and is sufficient.

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).)¹ 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 determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§ 1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being made against it, such that respondent may 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.)

Here, the District's request meets the above requirements by setting out two "problems" with supporting factual allegations about the time periods at issue, why the District sought the assessments, and the District's efforts to obtain parental consent. As to each problem, the District has alleged a proposed resolution. In sum, the District's request meets the notice requirements of the IDEA.

¹ All statutory citations are to Title 20 United States Code unless otherwise noted.

ORDER

1. The complaint is sufficient.
2. All dates shall remain on calendar.

Dated: November 5, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings