

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ROSEVILLE JOINT UNION HIGH  
SCHOOL DISTRICT .

OAH CASE NO. 2009120047

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On November 23, 2009, Student's mother (Student) filed a Due Process Hearing Request.<sup>1</sup> (complaint) naming Roseville Joint Union High School District (District) as the respondent.

On December 6, 2009, Heather M. Edwards, Attorney at Law, Girard, Edwards and Hance, 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).)<sup>2</sup> 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 sufficiency of a complaint is made based on the face of the complaint. (§ 1415(c)(2)(D).)

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,

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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.

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

In claim number one, Student alleges that curriculum accommodations required by the last individualized education plan (IEP) have not been taking place. The complaint does not state the date of the IEP. However, a copy of an IEP dated August 5, 2009, is attached to the complaint. It is reasonable to conclude that this is the IEP referenced in the complaint. This claim is legally sufficient.

In claim number two, Student alleges that his last triennial assessment was traumatic because those assessing him were not familiar with his disability. While the complaint does not state the date of the triennial assessment, it is reasonable that the date of Student's last triennial assessment is known to the District. This claim is legally sufficient.

In claim number three, Student alleges he received "very little support in the teacher-student relationship," there was no communication between the teachers and the paraprofessional, and the paraprofessional was inexperienced and untrained. The complaint does not allege adequate related facts to understand the nature of the alleged violation. For example, it is unclear whether the IEP required additional support that was not provided, or whether Student claims that the IEP should have included additional classroom support. This claim is not legally sufficient.

In claim number four, Student alleges that he has not been given "a chance and the opportunity to succeed. Not working towards high school diploma." This claim does not include adequate related facts to understand the nature of the alleged violation. It is unclear what supports or services Student believes that he should have received in order to be provided a FAPE. This claim is not legally sufficient.

The complaint includes proposed resolutions for each of the four claims.

A respondent is entitled to know the basis of each claim and the nature of the specific allegations being made against it, so that a respondent may be able to prepare a response,

prepare for a resolution meeting, or prepare its defense at hearing. Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

### ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), claim numbers one and two of Student's complaint are sufficient.
2. Pursuant to section 1415(c)(2)(D), claim numbers three and four of Student's complaint are not sufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.<sup>3</sup>
4. 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.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Student's claims one and two.
6. The existing dates in this matter are not vacated. The order following prehearing conference issued on December 10, 2009, in OAH Case Number 2009110670, which involves the same parties, shall apply to this matter as well.

Dated: December 12, 2009

/s/

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JUDITH A. KOPEC  
Presiding Administrative Law Judge  
Office of Administrative Hearings

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