

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. 2009120557

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On December 3, 2009, attorney Nicole Hodge, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming Los Angeles Unified School District (District). On December 18, 2009, attorney Patrick Balucan, on behalf of 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. (20 U.S.C. §§ 1415(b)(7)(A)(ii)(III), 1415(b)(7)(A)(ii)(IV);² 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

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.

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 alleges two issues³, as follows:

Issue No. 1

Student alleges that District denied her a FAPE by failing to provide counseling services mandated by the last Individualized Education Program (IEP), failing to prepare an annual IEP, and failing to draft appropriate and measurable IEP goals and objectives. Student alleges that she transferred schools within the boundaries of the District, yet District failed to continue counseling services delineated in the last agreed-upon and implemented IEP from 2006, failed to conduct reviews, and failed to develop a new IEP. Student identifies the 2007-2008, 2008-2009, and 2009-2010 school years as the periods at issue.

Issue No. 2

Student, who is 17 years old, alleges that District denied her a FAPE by failing to provide a transition assessment and transition plan. Student claims that because District did not provide an annual IEP, they failed to provide a transition assessment or develop a transition plan for Student's postsecondary goals related to training, education, employment, and independent living skills. Student identifies Spring 2008, 2008-2009, and 2009-2010 school years as the periods at issue.

District asserts that the multiple years referred to in the complaint may include time periods that fall outside the Statute of Limitations. Under the IDEA and California Education Code, the complaint is evaluated on the face of the document and the only determination to be made upon filing of a Notice of Insufficiency is the sufficiency of the complaint on its face. District raises an issue that may form the basis for a later motion to dismiss or affirmative defense at hearing. Nevertheless, the facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and sufficient facts and dates to document the problem to permit District to adequately respond to the complaint and attempt to participate in a resolution session and mediation.

Therefore, the complaint is sufficient.

³ Student raised compensatory education as Issue No. 3 in the complaint which is more appropriately addressed as a proposed resolution. Student's request for compensatory education may be awarded as a remedy for the denial of FAPE from the beginning of the school year to the present due to District's failures to develop an annual IEP, provide services, develop goals, or a transition plan.

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: December 22, 2009

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings