

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009020742

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 24, 2009, attorney Paige R. Parrish, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Pasadena Unified School District (District).¹ On March 11, 2008, attorney Sharon A. Watt, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the due process hearing officer, the Office of Administrative Hearings (OAH), and the other party in writing, within 15 days of receiving the complaint, that the party against whom the complaint was filed believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C)²; 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.

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. 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.

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.

(*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 three issues against the District. Student does not allege sufficient facts in Issue One because the complaint does not identify the Individualized Educational Programs (IEPs) that purportedly did not provide adequate Resource Support Program (RSP) services. The complaint does not identify the RSP services the District provided and why these services were not adequate to meet Student's unique needs.

Issue Two does not contain adequate allegations because Student does not identify the time period when the District failed to provide her with assistive technology services and specifically why she requires assistive technology to address her unique needs. Finally, Student does not allege sufficient facts in Issue Three regarding when the District terminated Student's occupational therapy services and why she requires occupational therapy to address her visual motor deficits.

Student's complaint is therefore insufficiently pled in that it fails to provide the District with the required notice of a description of each problem and the facts relating to the problem. As discussed above, a responding party 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 responding party may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. Therefore, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

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 not later than 14 days from the date of this order.

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

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

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

Dated: March 12, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings