

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009030347

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On March 9, 2009, Parents, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Clovis Unified School District (District).¹ On March 24, 2009, attorney Daniel A. Osher, 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 of 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. (*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's complaint alleges 20 issues, and is 100 pages long. Most of the complaint is a summary of federal case law, administrative hearing decisions and special education statutes, which makes it hard for the reader to ascertain the underlying factual allegations against the District. Student alleges sufficient facts in Issue One that the District's August 25, 2008 Individualized Educational Program (IEP) did not provide him with a FAPE in the Least Restrictive Environment (LRE). The complaint adequately describes Student's unique needs, the District's IEP offer and why the District's offer would not allow him to make meaningful educational progress in the LRE.

Regarding Issue Two, the complaint contains sufficient allegations that the District violated Student's procedural rights because the August 25, 2008, September 24, 2008, and November 12, 2008 IEPs do not inform Parents of the methodology the District would use to educate Student, which prevented Parents from being able to meaningfully participate in the IEP process. Additionally, Student alleges sufficient facts that the District's offer was not based on accurate present levels of performance for Student. Issue Three contains sufficient allegations that the District denied Student a FAPE by implementing the August 25, 2008, September 24, 2008, and November 12, 2008 IEPs without first obtaining Parents' consent.

The District asserts that Issue Four is barred by the doctrine of res judicata because OAH's March 4, 2009 order in *Clovis Unified School District v. Student*, OAH Case No. 2008110543, denied Student's Motion for Stay Put for the District to implement the May 6, 2008 IEP. Determination of District's contention is not appropriate for a NOI, which just looks at the face of the complaint to determine its sufficiency. The District's contention should be made through a Motion to Dismiss. The complaint contains sufficient allegations in Issue Four that the District denied Student a FAPE by not implementing the May 6, 2008 IEP as Student's last agreed-upon and implemented educational program when Parents did not consent to the August 25, 2008 IEP.

Regarding Issue Five, Student alleges sufficient facts that the District's September 24, 2008, and November 12, 2008 IEPs did not offer Student adequate assistive technology (AT) services to meet his unique needs, and that the District needed to have an AT specialist attend these IEP meetings. The complaint contains sufficient allegations in Issue Six that the District failed to timely complete the assessments in the September 24, 2008 assessment plan.

Student fails to allege sufficient facts in Issue Seven because the complaint does not identify what are Student's culturally linguistic needs and how the District's IEPs failed to address this area of need. Additionally, the complaint does not state how the District's assessments failed to properly address this area of need. Regarding Issue Eight, the complaint does not contain adequate allegations because Student does not identify the assessments at issue and why the assessors were not qualified to assess Student. The complaint does not contain sufficient allegations in Issue Nine because the complaint is not

clear as to which IEP Student asserts does not have adequate goals and related services to meet his unique needs.

Student alleges sufficient facts in Issues Ten and Eleven that the District violated his procedural rights by refusing to discuss scientifically based instructional methodology at the September 24, 2008, November 12, 2008, January 16, 2009, January 26, 2009, and February 17, 2009 IEP meetings. Additionally, the District failed to provide Parents with prior written notice, which prevented Parents from adequately participating in the IEP process. The complaint contains adequate allegations in Issue Twelve that the District violated Student's procedural rights by not reviewing his goals and objectives during IEP meetings.

Regarding Issue Thirteen, Student alleges sufficient facts that the District denied him a FAPE by predetermining its August 25, 2008, September 24, 2008, November 12, 2008, January 16, 2009, January 26, 2009, and February 17, 2009 IEP offers, and did not consider information presented by Parents. The complaint contains sufficient allegations in Issue Fourteen that the District's IEPs do not offer Student adequate supports and related services to address his reading, language arts and speech and language deficits. Student asserts sufficient facts in Issue Fifteen that he needs special education services during the extended school year to received a FAPE and that the District failed offer extended school year services.

Student contends in Issue Sixteen that the District altered his educational records to hide the fact that Student was regressing, and not making adequate educational progress as claimed by the District. Student asserts in Issue Seventeen that the District's IEPs caused him to regress because the District developed the IEPs based on altered records. The complaint does not contain adequate allegations because Student does not identify generally the documents the District altered. Therefore, Issues Sixteen and Seventeen are insufficiently pled.

Regarding Issue Eighteen, the complaint contains sufficient allegations that the District violated Student's procedural rights by not making his complete educational record available for inspection by Parents, which prevented them from adequately participating in Student's educational decision-making process. Student does not allege sufficient facts in Issue Nineteen because this contention is a general attack on how the District provides special education services to all students, and does not contain specific allegations showing how the District denied Student a FAPE. Finally, Student alleges sufficient facts in Issue Twenty that the District did not provide him with a FAPE during the 2008-2009 school year.

With regard to Issues Seven, Eight, Nine, Sixteen, Seventeen and Nineteen, Student fails to allege sufficient facts. 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 respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. Student's complaint fails to provide this notice in Issues Seven, Eight, Nine, Sixteen, Seventeen and Nineteen.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Issues One, Two, Three, Four, Five, Six, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Eighteen and Twenty of Student's complaint are sufficient.
2. Pursuant to section 1415(c)(2)(D), Issues Seven, Eight, Nine, Sixteen, Seventeen and Nineteen of Student's complaint are insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), XXXXX shall be permitted to file an amended complaint.³
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 Issues One, Two, Three, Four, Five, Six, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Eighteen and Twenty.

Dated: March 26, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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