

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009030367

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On March 10, 2009, attorney Kathleen M. Loyer, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Garden Grove Unified School District (District).¹ On March 19, 2009, attorney Ronald D. Wenkart, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.²

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)³; 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 The District also filed a Motion to Dismiss, which will be ruled on in a separate Order.

³ 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

The complaint contains two issues that involve whether the District denied Student a FAPE by not adequately addressing her social-emotional needs in the Spring of 2008. The complaint contains sufficient allegations in Issue One that in the Spring of 2008 that the District knew of Student's social-emotional needs caused by peer harassment, but failed to convene an Individualized Education Program meeting to address her worsening emotional condition. Student alleges adequate facts in Issue Two that in the Spring of 2008 that the District failed to assess her in all areas of suspected disability by failing to assess her social-emotional needs.⁴

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 the District to adequately respond to the complaint and attempt to participate in a resolution session and mediation. Therefore, Student's complaint is sufficient.

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: March 24, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁴ The District's challenge to the sufficiency of Student's complaint concerning Student's claims involving violations of 42 U.S.C. section 1983 and Section 504 of the Rehabilitation Act will be addressed in the motion to dismiss.