

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2009030660

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On March 13, 2009, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a document entitled “Notice of Due Process Complaint Statement of Issues and Resolutions” (Complaint) that named Palmdale School District (District).

On March 27, 2009, the District filed with OAH a Notice of Insufficiency regarding the 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).)¹ 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 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, subsections (e) and (f). 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.)

¹ All statutory citations are to Title 20 United States Code unless otherwise noted.

DISCUSSION

In the "Background Facts" section, the Complaint alleges that the District denied Student a FAPE by failing "to schedule a follow up IEP to address Adaptive Physical Education relating to services and goals and objectives relating to Adaptive Physical Education and other unfinished request that were made at the IEP on December 10, 2008, that have not been resolved and or/completed." The Complaint further alleges, as Issue Two, that "(F)or the 2008-2009 school year did Palmdale School District deny a [FAPE] beginning January 5, 2009, by failing to schedule a follow up IEP pursuant to the IEP dated December 10, 2008."

The Notice of Insufficiency challenges the sufficiency of Issue Two. However, the Proposed Resolutions explain the "other unfinished request" allegedly made at the December 10, 2008 IEP, and, along with the issue of Adaptive Physical Education, define the parameters of this case. These other items include the review and revision of a Behavior Support Plan to a Behavior Intervention Plan, the provision of a Behavior Intervention Case Manager, the review and revision of accommodations and modifications to address Student's unique needs, and the development of goals and objectives in the area of organizational skills.

Viewed in this manner, the Complaint contains sufficient information in order to allow the District to hold a resolution session, participate in mediation, and prepare a defense in this matter.

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 30, 2009

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings