

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SANTA ANA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009040059

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On March 27, 2009, advocate Rafael Gutierrez, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Santa Ana Unified School District (District).¹ On April 15, 2009, attorney Sundee M. Johnson, 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.

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 was filed with OAH by facsimile transmission on March 27, 2009, and served on the District by regular mail. The District indicates in its NOI that it received Student's complaint on April 1, 2009. The District's NOI was dated, filed with OAH, and served on April 15, 2009, which is within 15 days after it received Student's complaint. Therefore, the District's NOI was filed within the statutorily required timeline.

Student's complaint alleges six issues against the District regarding its purported failure to provide Student with a FAPE in the least restrictive environment and procedural violations regarding Student's Individualized Educational Program (IEP) meetings. Student alleges in Issue One that the District did not provide her with a FAPE in the least restrictive environment. However, the complaint does not contain sufficient allegations because Student does not identify adequately in the factual narrative the dates of the alleged violations. Student is presently 15 years old and the complaint allegations are not clear if the purported District violations go back to when Student was 5 years old. For the same reasons, Student does not allege sufficient facts in Issue Two that the District failed to get Parents' informed consent on Student's IEPs.

Student alleges in Issue Three that the District did not comply with applicable federal and California special education laws in developing Student's IEPs. The complaint does not allege sufficient facts because Student does not adequately identify the IEPs at issue and the particular violations. Student alleges sufficient facts in Issues Four that the District committed procedural violations that prevented Parents from participating in Student's educational decisionmaking process by unilaterally canceling the December 3, 2008, December 11, 2008, and February 20, 2009 IEP meetings.

Student alleges in Issue Five that the District should not have had two specified District personnel attend Student's IEP meeting because of past disputes between Parents and these individuals. However, the complaint allegations do not show how the presence of these two District personnel denied Student a FAPE or violated Parents' procedural rights. Finally, Student alleges sufficient facts in Issue Six that the District denied Parents' procedural rights by prohibiting Yvette Cabrera from attending the IEP meeting because Ms. Cabrera had knowledge of Student's needs and could assist Parents in the IEP meeting. (34 C.F.R. § 300.321(a)(6) and (c)(2006).)

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 it may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. Issues Four and Six are sufficiently pled to put the District on notice as to the basis of Student's claims. With regard to Issues One, Two, Three and Five,

Student fails to allege sufficient facts to put the District on notice. Therefore, Student failed to state sufficient facts supporting Issues One, Two, Three and Five, and these claim are insufficient.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Issues Four and Six of Student's complaint are sufficient.
2. Pursuant to section 1415(c)(2)(D), Issues One, Two, Three and Five of Student's complaint are insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student 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 Four and Six.

Dated: April 21, 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.