

In the Matter of:

PARENT on behalf of STUDENT,

v.

BURBANK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009040217

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On April 3, 2009, Parent filed a Due Process Hearing Request (Complaint) on behalf of Student naming the Burbank Unified School District (District).

On April 9, 2009, Karen E. Gilyard, attorney for the District filed a Notice of Insufficiency (NOI) as to Student's entire Complaint.

APPLICABLE LAW

A party against whom a due process hearing request has been filed 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) and Education Code section 56502, subdivision (c)(1). Section 1415, subsection (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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing parties against whom complaints are filed 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). (See H.R.Rep. No. 108-77, 1st Sess. (2003); Sen. Rep. No. 108-185, 1st Sess. (2003).) In addition, fundamental principles of due process apply to administrative proceedings in special education matters. A party against whom a 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 All statutory citations are to Title 20 United States Code unless otherwise noted.

DISCUSSION

The District 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 District may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing.

Issue One: Student alleges that the IEP team always stops the IEP meeting in the middle of discussions. Student references a 2-1/2 hour IEP meeting on March 9, 2009, however he fails to provide any information as to why that meeting was insufficient or how it affected Student's offer of placement and services or impacted on Student's ability to access his education or deny Student a FAPE in any other manner. Issue One is insufficient.

Issue Two: Student alleges there is little or no parent's input in all IEP meeting notes and some IEP meeting notes are not true. Student fails to specifically identify which IEP meetings she is alleging, and what specifically is untrue. Student further fails to provide any information as to how the IEP notes deny Student a FAPE. Lastly, Student's proposed remedy is to have a new IEP. Student's right to request a new IEP meeting does not require the filing of a Request for Due Process Hearing or a finding of denial of FAPE. Student has not alleged that he has requested a new IEP meeting or that the District has refused to conduct an IEP meeting. Issue Two is insufficient.

Issues Three and Four: Student's allegations in Issues Three and Four are unintelligible. Student does not sufficiently identify what meetings or what reports and assessments he is referring to in his allegations. Further, Student's requested remedies do not identify what independent assessments are requested; provide any basis for awarding compensatory education or changing Student's OT hours. Issues Three and Four are insufficient.

Issue Five: Student alleges he was denied re-entry to school on February 2, 2009. Student's allegation fails to indicate how long Student was kept out of school or how his non-attendance effected his education. Student's requested remedies do not correlate to his issue or factual allegations. Issue Five is insufficient.

Issue Six: Student alleges that the District's offer is insufficient. Student's allegation is vague as to which assessments, which therapists and which offers he is referring to. Further, Student's requested remedies are vague and request payment for assessments and services factually alleged nowhere in the Complaint. Issue Six is insufficient.

Issue Seven: Student alleges that Parent and a speech therapist were unable to conduct a three hour class observation; Student's records need to be examined; and Student's report card was incomplete. Student fails to allege the time period in which these allegations occurred. Student further failed to provide the factual allegations to support these claims. Issue Seven is insufficient.

Issue Eight: Student alleges that Student does not receive speech and OT services regularly. Student has not alleged a time frame for this allegation of failure to provide services. Further, Student has not provided sufficient information to identify what services the District is required to provide. Issue Eight is insufficient.

While it is understood that Student's parent has prepared this Complaint herself, and English may be a second language, the Complaint remains vague and unintelligible in most parts. As discussed above, District 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 District 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 its entirety.

Pursuant to Education Code, section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parent request the assistance of a mediator in identifying the issues, he/she should contact OAH immediately in writing.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's entire Request for Due Process Hearing is insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.²
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, this complaint is dismissed in its entirety.

Dated: March 13, 2009

/s/

JUDITH L. PASEWARK
ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

² The filing of an amended complaint will restart the applicable timelines for a due process hearing.