

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GARDEN GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENTS on behalf of STUDENT.

OAH CASE NO. 2009040999

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On April 28, 2009, Garden Grove School District (District) filed a Due Process Hearing Request¹ (Complaint) naming (Student) as the respondent.

On May 13, 2009, Parents on behalf of Student (Parents) filed a Notice of Insufficiency (NOI) as to District's 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).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A). The notice of insufficiency shall be filed within fifteen days of receiving the due process hearing request. The hearing officer shall make a sufficiency determination on the face of the request for due process hearing. (Ed. Code, § 56502, subd. (d)(1).)

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); Ed. Code, § 56502, subd. (c).)

The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations against them, to prevent respondents from having to prepare for any and every issue that could possibly be raised, to provide

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.

respondents with sufficient information to respond to the complaint as required by section 1415(c)(2)(B) and to enable the parties to meaningfully 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. 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.)

DISCUSSION

The IDEA does not require that the person or entity filing a claim plead facts with particularity but rather the requirement is, in essence, to file a short and plain statement of the cause of action and the grounds upon which it rests, and to the relief entitled. In other words, the claim must answer the questions who (i.e. the district), what (what are you claiming), how (what are the salient facts regarding your claim/the grounds) and when (timeframe).

Parents contend that the Complaint is insufficient because it fails to set out sufficient facts or information to support District's claims and to enable Parents to prepare a defense. Specifically, Parents argue District failed to include facts regarding: discrepancies in District's speech and language assessment and a speech assessment conducted by NPA Speech Pathologist Associates; Parents concerns about Student's APE assessment conducted by District; and Parents request and District's failure to conduct a physical therapy assessment and a functional behavior analysis assessment .

A Complaint need not allege the particularities asserted by Parents and the Complaint alleges sufficient facts to put Parents on notice of the issues. District's Complaint is sufficiently pled in that it provides Parents with the required notice of a description of the problem, and the facts relating to the problem.

A Complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. District proposes that OAH find it conducted a psychological, occupational therapy and speech and language assessments in accordance with the requirements of the Education Code and the IDEA, and that it is not obligated to fund IEEs at public expense. District's proposed resolutions are sufficiently stated.

ORDER

1. The Complaint is sufficient under section 1415(b)(7)(A)(ii).

2. All mediation, pre-hearing conference, and hearing dates in this matter shall remain on calendar.

Dated: May 18, 2009

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings