

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LA HONDA-PESCADERO UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2009050266

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On May 4, 2009, Parent, on behalf of Student, filed a Due Process Hearing Request (complaint) against the La Honda-Pescadero Unified School District (District).¹ On May 14, 2009, attorney Eugene Whitlock, 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 sole issue for hearing is whether the District failed to meet its child find obligation by not timely and properly assessing Student for eligibility to receive special education services. This claim is sufficiently supported by the factual allegations in Student's complaint, which put the District on notice of the issues forming the basis of the claim. The complaint contains allegations that Student's parent requested, from January 2008 through the present, that the District assess Student for possible eligibility to receive special education services due to her attention deficit/hyperactivity disorder and the District failed to complete the assessment process.

Based on the foregoing, 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 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: May 19, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings