

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

HAWTHORNE SCHOOL DISTRICT.

OAH CASE NO. 2009050505

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On May 12, 2009, Student filed a Due Process Hearing Request (complaint) naming the Hawthorne School District (District).¹ On May 20, 2009, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The party against whom a due process complaint has been filed 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).

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). (See H.R.Rep. No. 108-77, 1st Sess. (2003).) 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.

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 alleges that, based upon a February 2008 assessment and Student's behavioral issues, the appropriate placement for Student is in a nonpublic school environment, and not the special day program District offered in an October 31, 2008 individualized educational program. The facts relating to the February 2008 assessment and to Student's behavioral issues are detailed in the complaint.

As a proposed resolution, Student requests additional speech therapy.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and sufficient facts and dates to document the problem to permit District to adequately respond to the complaint and attempt to participate in a resolution session and mediation. Therefore, Student's statement of the problem is sufficient.

In addition, a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint is well defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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 22, 2009

/s/

RALPH VENTURINO
Administrative Law Judge
Office of Administrative Hearings