

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009060381

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 08, 2009, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent. District timely filed a Notice of Insufficiency (NOI). As discussed below, the complaint is sufficient.

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). 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 determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§ 1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being made against it, such that respondent may 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.)

Here, the complaint on its face states that the issues alleged are prospective and limited to the 2009-2010 school year. All of Student's issues relate in some way to the District not offering Student in-home ABA therapy services. "Allegation Two" (there is no "Allegation One" in the complaint) alleges that the District's offer of FAPE fails to state the research based methods to be used with Student in the offered placement. "Allegation Three" alleges that District staff should have, but did not, give parents information about research-based interventions used to increase language in children with autism. "Allegation Four" alleges that the District's offer of placement is not the least restrictive environment. "Allegation Five" alleges that the District's offer, which did not include home ABA therapy,

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.

was predetermined. “Allegation Seven” (there is no “Allegation Six”) alleges that insufficient services were offered to implement Student’s proposed social skills goals. “Allegation Eight” alleges that the District’s offer is not FAPE because it contains insufficient emphasis on self-help skills. “Allegation Nine” alleges that Student requires home ABA therapy to be provided a FAPE. Finally, “Allegation Ten” alleges that Student’s IEP should have included parent training regarding self-help skills, communication with Student and addressing negative behaviors. The above allegations, when read with the factual background allegations are sufficient. In addition, the complaint meets the requirements of the IDEA by alleging proposed resolutions to the above allegations including continued ABA services, speech and language services, an independent evaluation, materials reimbursement, and reimbursement of any costs parent incur to provide an appropriate program.

Based on the above, the complaint is deemed sufficient under section 1415(b)(7)(A)(ii). All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

IT IS SO ORDERED.

Dated: June 24, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings