

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ORANGE COUNTY DEPARTMENT OF
EDUCATION, SANTA ANA UNIFIED
SCHOOL DISTRICT, NORTH ORANGE
COUNTY SELPA AND ORANGE
COUNTY HEALTH CARE AGENCY.

OAH CASE NO. 2009060423

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 4, 2009, attorney Kathleen M. Loyer, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Orange County Department of Education (OCDOE), Santa Ana Unified School District (District), North Orange County Special Education Local Plan Area (SELPA) and Orange County Health Care Agency (OCHCA).¹ On June 12, 2009, attorney Michelle L. Palmer, on behalf of OCHCA, 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

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.

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. (*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 contains five issues. According to the complaint, Student is presently eligible for special education services under the criteria of mental retardation. The issues involve the responding parties' failure to identify Student as also being eligible for special education services under the criteria of emotionally disturbed and failing to address his mental health issues. Additionally, Student asserts that the responding parties failed to address his speech and language, auditory processing and social-emotional deficits in his individualized educational programs (IEPs).

Regarding Issues One and Three, Student's complaint contains sufficient factual allegations against OCHCA, the District and OCDOE explaining why Student is eligible for special education services under the criteria of emotionally disturbed. Additionally Student alleges sufficient facts that OCHCA denied Student a FAPE by not offering him any mental health services to address his acting out behaviors, anxiety, depression and school avoidance. These claims are sufficiently supported by the factual allegations to put OCHCA, the District and OCDOE on notice of the issues forming the basis of these claims.

Regarding Issues Two and Four, Student's complaint does not contain sufficient factual allegations because the complaint does not identify the IEPs at issue and the services Student required and, therefore, does not provide the responding parties with the required notice. Specifically, Student does not allege the type of services that the responding parties needed to offer Student to address his unique needs.

Regarding Issue Five, Student's complaint contains sufficient factual allegations explaining how the responding parties denied Student a FAPE by failing to address his significant delays in academic functioning and skills, and social-emotional deficits in his individual transition plans. These claims are sufficiently supported by the factual allegations to put the respondent parties on notice of the issues forming the basis of this claim.

Issues One, Three and Five are sufficiently pled to put the responding parties on notice as to the basis of Student's claims.

As discussed above, a responding party 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 the responding party may be able to prepare a response, prepare for a

resolution session, or prepare a defense for hearing. Student's complaint fails to provide this notice in Issues Two and Four against the responding parties.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Issues One, Three and Five of Student's complaint are sufficient.
2. Pursuant to section 1415(c)(2)(D), Issues Two and Five of Student's complaint are insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³
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, the hearing shall proceed only on Student's Issues One, Three and Five.

Dated: June 15, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.