

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009060808

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 16, 2009, attorney Kathleen M. Loyer, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) against the Irvine Unified School District (District). On July 1, 2009, attorney Daniel Harbottle, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

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);³ Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); 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.

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 The District also filed a Motion to Dismiss, which will be ruled upon in a separate Order.

³ All statutory citations are to Title 20 United States Code unless otherwise noted.

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 three issues, each with sub-issues, with allegations against the District from the 1999-2000 school year (SY) through the present. According to the complaint, the District found Student eligible for special education services during SY 2001-2002 under the criteria of speech and language impairment, and later changed his eligibility to other health impaired in SY 2003-2004. The issues involve the District's failure to identify Student as also being eligible for special education services under the criteria of emotionally disturbed, failure to address his social-emotion deficits, procedural violations, failure to update Student's present levels of performance and failure to address Student's visual problems.

Regarding Issue 1(a), Student's complaint does not contain sufficient factual allegations because the complaint is not clear if Student contends that the District failed to timely find Student eligible to receive special education services before SY 2001-2002, or whether the District also needed to determine Student's was eligible under the criteria of emotionally disturbed beginning with SY 2001-2002, in addition to Student's present eligibility for special education services. Regarding Issue 1(b), the complaint contains sufficient allegations that the District stopped providing Student with speech and language services during SY 2001-2002.

Regarding Issue 2, Student's complaint contains sufficient factual allegations that, from SY 2001-2002 through the present, the District failed to address Student's social-emotional needs in any individualized educational program (IEP) and did not assess Student in this area of suspected disability. This claim is sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of this claim.

Regarding Issues 3(a) through (d) and (h) through (k), Student's complaint does not contain sufficient factual allegations because Student does not identify the particular IEPs, between SY 2001-2002 and the present, in which the District violated procedural requirements and did not provide adequate goals and services. The lengthy factual narrative, which includes possible violations from SY 1999-2000 through the present requires the District to guess which facts relate to a particular sub-issue. (*Student v. Valley Center Union School District* (2009) Cal.Ofc.Admin.Hrngs. Case No. 2009010785.)

Regarding Issue 3(e), the complaint adequately identifies the IEPs in which the District failed to develop an individualized transition plan during SY 2008-2009. Regarding Issue 3(f), the complaint contains sufficient allegations that the District failed to make an accurate referral to county mental health for a mental health assessment. Regarding

Issue 3(g), Student alleges adequate facts that the District did not update his present levels of performance in the IEPs from SY 2005-2006 through the present. These claims are sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of these claims.

Issues 1(b), 2, and 3(e), (f) and (g), are sufficiently pled to put the District 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 1(a) and 3(a) through (d) and (h) through (k) against the District.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Issues 1(b), 2, and 3(e), (f) and (g), of Student's complaint are sufficient.

2. Pursuant to section 1415(c)(2)(D), Issues 1(a) and 3(a) through (d) and (h) through (k) 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.⁴

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 1(b), 2, and 3(e), (f) and (g).

Dated: July 2, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁴ The filing of an amended complaint will restart the applicable timelines for a due process hearing.