

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009060967

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 19, 2009, Parent, on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Angela Beffert, an employee of the District, as the respondent.

On June 29, 2009, Justin R. Shinnefiled, counsel for the District (District) filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

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 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) [the House Committee on Education and the Workforce stated that the requirement of a clear and specific notice is essential to make the complaint process work in a fair and equitable

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.

manner]; Sen. Rep. No. 108-185, 1st Sess. (2003) [the Senate Committee on Health, Education, Labor and Pensions stated that the purpose of the sufficiency requirement is to ensure that the respondent will have an awareness and understanding of the issues forming the basis of the complaint, to prevent the respondent from having to prepare for any and every issue that could possibly be raised, and to give the respondents sufficient information to provide specific responses and to participate in resolution sessions and mediation].) 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. (*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 four issues. All of Student's issues are insufficiently pled as they fail to provide the District with the required notice of a description of each problem and the facts relating to those problems. Specifically:

Issue One: Student contends that the District is requesting to expel Student. Student has alleged no factual information to support his claim. Additionally, Student has not indicated how he has been denied a free and appropriate public education (FAPE) as a result of this alleged expulsion, or why the proposed expulsion is not appropriate. Issue One is insufficient.

Issue Two: Student contends that the District has denied Student a FAPE. Student alleges no further information to support this contention. Student fails to identify a time frame in which the alleged denial of FAPE took place; what specifically happened; and why the District's actions or inactions constitute a denial of FAPE. Issue Two is insufficient.

Issue Three: Student requests a stay put order. Student, however, alleges no factual information to identify what he believes should be "stay put" or why a stay put order is necessary. Issue Three is insufficient.

Issue Four: Student alleges that the District will not allow Student to attend summer school. Student fails to allege any factual information to support this claim. Student provides no information to indicate he is entitled to attend summer school, or that his inability to attend will result in a denial of FAPE. Issue Four is insufficient.

As discussed above, a respondent 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 respondent may be able to prepare a response, prepare for a resolution meeting, or

prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).³

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and the District's notice of insufficiency is granted.

2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.⁴

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

6. Pursuant to Education Code, section 56505, subdivision (e)(6), upon the request of a parent who is not represented by an attorney, OAH shall provide a mediator to assist the parent in identifying the issues and the proposed resolutions of the issues. Should Parent desire the assistance of a mediator, Parent must contact OAH at (916) 263-0880 immediately upon receipt of this Order.

Dated: June 29, 2009

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

³ It is also noted that the District requested that the parties named as respondent's be dismissed from the complaint, as the District, not its individual employees, is the actual respondent in a due process matter. The need for dismissal of parties is moot as the entire complaint is deemed insufficient.

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