

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN on behalf of STUDENT,

v.

LAWNDALE SCHOOL DISTRICT.

OAH CASE NO. 2009070392

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On July 10, 2009, attorney Igna N. Sanders, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Lawndale School District.¹ On July 20, 2009, attorney Sharon A. Watt, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

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);² 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.

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

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.

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 five issues against the District. The issues involve the District's purported failure to timely assess Student for eligibility to receive special education services and the District's alleged failure to provide Student with adequate services to meet her unique needs. Although not framed as a request for an expedited hearing, Student's Issue Three asserts that the District failed to hold a timely manifestation determination hearing after suspending Student for more than ten school days and moving to expel Student, despite the District's basis of knowledge that Student might be eligible to receive special education services.

Regarding Issues One, Two, Four and Five, Student's complaint does not contain sufficient factual allegations to provide the required notice to District because the complaint does not allege that Student is eligible to receive special education services under any eligibility category. If Student is not eligible to receive special education services, Student does not have any claims against the District based on allegations in Issues One, Two, Four and Five.³

Regarding Issue Three, Student asserts that the District denied her a FAPE by not convening a manifestation determination hearing after the District suspended her for more than ten school days and after it commenced the expulsion process. Student asserts that the District needed to convene a manifestation determination hearing because the District's knowledge that Student might be eligible for special education services because it had not completed its initial eligibility assessment.

Issue Three is determined to be a request for an expedited hearing. Section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings. Thus, an NOI cannot be granted regarding a due process complaint in an expedited hearing, and the District's NOI regarding Issue Three is denied.

³ The District also contends that Student's guardian does not have legal standing to file this complaint because Student's educational rights are still vested with Student's parents. The District's contention is not appropriate for a NOI, which just looks at the face of the complaint to determine its sufficiency. The District's contention should be made through a Motion to Dismiss if Student files an amended complaint.

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 as to Issues One, Two, Four and Five.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled as to Issues One, Two, Four and Five, 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 as to Issues One, Two, Four and Five.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, Issues One, Two, Four and Five will be dismissed, and the matter proceed solely on the expedited hearing request.
5. The District's notice of insufficiency as to Issue Three is denied. OAH shall issue a scheduling order for an expedited hearing regarding Issue Three in Student's complaint.

Dated: July 28, 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 for the non-expedited hearing issues.