

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009090570

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On September 8, 2009, Parent, on behalf of Student, filed with the Office of Administrative Hearings, Special Education Division (OAH), a Request for Mediation and Due Process Hearing ¹ (Complaint) that named the Los Angeles Unified School District (District) as the respondent.

On September 15, 2009, counsel for the District filed with OAH a Notice of Insufficiency as regards 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

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.

under section 1415, subsections (e) and (f). 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 makes the following allegation: "(Student) is barely at 4th grade level – according to Sylvan Learning Center and West Valley School. He will need to be held back in 5th grade. He also was away from home for one week – a camp where all 'normal' kids attended. He can fit in well. I did not receive even 1 phone call in regards to his behavior." As a proposed resolution, the Complaint requests that "(Student) will remain in 5th grade."

The Complaint does not set forth sufficient facts regarding the problem that Student is having with either the identification, assessment, educational placement or provision of a free appropriate public education for Student by the District. The District cannot adequately prepare for a resolution session, mediation or due process hearing under the current state of the Complaint.

It is recommended that Student's parent consider making a request for a Mediation Only which is allowed under Education Code section 56500.3. There are no pleading requirements for a Mediation Only request. In the alternative, it is recommended that Student's parent pursue informal complaint resolution procedures followed by Los Angeles Unified School District. In the event that Student's parent still wishes to pursue a Request for Due Process Hearing, then it is recommended that she make a request of OAH for mediator assistance in the preparation of the due process complaint.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's Complaint is insufficiently pled, and the Notice of Insufficiency brought by the Los Angeles Unified School District is granted.

2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an Amended Complaint.³

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.

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

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.

Dated: September 21, 2009

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings