

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009101050

DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 08, 2009, Student filed a Due Process Hearing Request¹ (complaint) naming San Diego Unified School District as the respondent. The complaint alleged, without providing a date or other details, that Student had been suspended and recommended for expulsion. The complaint then poses a series of questions, but does not include any facts relating to the questions or any proposed resolutions. On October 23, 2009, District timely filed a Notice of Insufficiency (NOI). For the reasons set forth below, the complaint is insufficient and Student will be given a chance to amend it.

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 must contain the child's name, residence address, and the name of the school the child is attending. (20 U.S.C. § 1415(b)(7)(A)(ii)(I).) To be sufficient, the complaint must also contain: (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 determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§ 1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being made against it, such that respondent may 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.)

Here, the complaint does not identify Student's residence address and it is unclear whether Student attended the high school identified in the complaint or is currently attending

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.

the high school identified in the complaint. Further, the only factual allegation is that Student was suspended and recommended for expulsion on unspecified dates. The remainder of the complaint does not meet the requirement of identifying “problem(s)” related to special education and supplying facts related to the problems. Instead, the complaint is phrased as a series of questions, some of which can be interpreted as being unrelated to special education, without any further factual allegations. The complaint does not include any proposed resolutions. Thus, on its face, the complaint is insufficient to provide the District with the required notice.

ORDER

1. The complaint is insufficient and District’s NOI is granted.
2. Student may file an amended complaint within 14 days of the date of this order. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii).
3. Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in amending their due process hearing request.
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: October 26, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings