

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN DIEGO U.S.D.

OAH CASE NO. 2009110082

ORDER ON DISTRICT'S NOI

On November 2, 2009, Student filed a Due Process Hearing Request naming San Diego Unified School District (District) as the respondent. The sole allegation of the complaint was: “[Student] was not given an adequate diagnosis and resources.” The proposed resolutions were a new assessment and transfer to a “non-public setting.” District filed a Notice of Insufficiency (NOI) on November 2, 2009. As discussed below, the complaint is insufficient, but Student will be allowed 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).)¹ 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 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, Student’s single sentence “problem” is not sufficient to put the District on notice of what the issues are regarding the identification, evaluation, placement or provision of special education to Student. For example, the District cannot tell what services are allegedly deficient and during what time period. Thus, the complaint is not sufficient.

¹ All statutory citations are to Title 20 United States Code unless otherwise noted.

ORDER

1. The complaint is insufficient.
2. Student may file an amended complaint within 14 days of the date of this order. The filing of an amended complaint will restart the applicable timelines for a due process hearing. 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.
3. If Student does not file an amended complaint within 14 days, the complaint will be dismissed.
4. All dates are vacated.

Dated: November 05, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings