

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND LAUSD SPECIAL
EDUCATION LOCAL PLAN AREA.

OAH CASE NO. 2009110462

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On November 12, 2009, Student filed a Due Process Hearing Request¹ (complaint) naming Los Angeles Unified School District (District) and LAUSD Special Education Local Plan Area (LAUSD-SELPA) as respondents. On November 24, 2009, District filed a timely Notice of Insufficiency (NOI). As discussed below, the complaint is insufficient. The NOI is granted.

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 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.)

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.

DISCUSSION

The complaint states four numbered issues. The first three relate to the alleged non-recognition by respondents of the law firm retained by Parent. The first issue states that respondents have refused to recognize the Special Education Law Firm (“Law Firm”) as counsel; the second issue states that respondents have refused to provide Student’s educational records to Law Firm; the third issue states that respondents have refused to provide to Law Firm a list of persons who have received Student’s educational records.

California Education Code section 56501, subdivision (a), limits due process hearings to the circumstances where there is a proposal or refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child. Student’s first through third issues fall outside this scope and are thus outside OAH’s jurisdiction.

The fourth numbered issue alleges the following claims, however it is insufficient in that it provides no factual support for any of them: (1) Student has not received educational benefit from his past IEP’s and has not been provided with a free, appropriate public education in the least restrictive environment; (2) respondents have failed to convene an IEP meeting; (3) respondents have failed to properly assess Student in each of his areas of suspected disability; and (4) respondents have failed to address each area of suspected disability pursuant to an appropriate IEP.

Since no facts are alleged in the complaint, it is insufficient to put respondents on notice of the issues forming the basis of the complaint, such that respondents can respond to the complaint and participate in a resolution session. Although the IDEA does not require that the person or entity filing a claim plead facts with particularity, it does require a short and plain statement of the claims and the grounds upon which they rest. In other words, the claim must answer the questions who (i.e. the District), what (what are you claiming), how (what in general are the salient facts regarding your claim/the grounds) and when (timeframe). Thus, the complaint is not sufficient to give respondents notice of the nature of the problem relating to the provision of a free appropriate public education (FAPE).

ORDER

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.³

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

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.

Dated: November 30, 2009

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings