

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010010592

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On January 11, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Mt. Diablo Unified School District (District) as the respondent. District timely filed a Notice of Insufficiency (NOI) on January 25, 2010. In its NOI, District contends that Issue Two in the complaint is insufficient because it cannot be determined what Student is identifying as the problem and the proposed resolution seeks an order regarding data-keeping on other students that is outside OAH jurisdiction. District contends that Issue Four is insufficient because the problem identified, regarding the contents of school records, is outside OAH jurisdiction. As discussed below, Issues Two and Four are insufficiently described in the complaint. Accordingly, the NOI will be granted with an opportunity for Student to amend the complaint.

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.

Here, Issue Two is insufficient because the District cannot determine whether, and if so, how, Student is alleging he was denied a free appropriate public education under the IDEA. In particular, Issue Two alleges that the “school approach” has been ineffective, without reference to whether that “approach” is something in Student’s IEP or something else. Considering that in Issue One Student clearly articulated that his BSP is ineffective, it is unclear what Issue Two is referring to when it appears to be referencing school behavior and suspensions. District is also correct that the proposed resolution of ordering data regarding suspension to be made available to the general public would be outside OAH jurisdiction. Accordingly, Issue Two is insufficient.

As to Issue Four, it is also insufficiently pleaded. Student is complaining that his special education assessments are kept as part of his cumulative file, and Student has proposed resolutions regarding how the District should keep its files. However, how the District keeps its files is not a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. Accordingly, Issue Four is insufficient.

ORDER

1. Issues Two and Four of Student’s complaint are insufficiently pled.
2. Student shall be permitted to 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 fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Three.

Dated: January 26, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings