

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH No. N2006060237

**DETERMINATION OF
SUFFICIENCY
OF DUE PROCESS HEARING
REQUEST NOTICE**

On June 6, 2006, the Office of Administrative Hearings (OAH) received a due process hearing complaint from attorneys Michelle Ortega and Timothy Adams on behalf of Petitioner Student (Petitioner). On June 15, 2006, OAH received from West End SELPA Program Manager Joann Reilly on behalf of Respondent Chino Valley Unified School District (District) a Notice of Insufficiency regarding Petitioner's due process hearing complaint.

APPLICABLE LAW

The Individuals with Disabilities Education Improvement Act of 2004 became effective July 1, 2005, and significantly amended Title 20 United States Code section 1415(b) and (c). Either party now has the right to challenge the sufficiency of any due process hearing complaint notice (Complaint). In addition, a party filing the Complaint is not entitled to a hearing if it does not comply with subparagraph (b)(7)(A). The specific subsections at issue are:

20 U.S.C. § 1415(c)(2)(A), provides that either party has the right to challenge the sufficiency of any Complaint.

20 U.S.C. § 1415(b)(7)(B), provides that a party filing the Complaint is not entitled to a due process hearing if the Complaint does not comply with 20 U.S.C. § 1415(b)(7)(A).

20 U.S.C. § 1415(c)(2)(D), provides that the administrative law judge shall make a determination “on the face of the notice” whether the Complaint meets the requirements of 20 U.S.C. § 1415(b)(7)(A).

20 U.S.C. § 1415(b)(7)(A)(ii)(III), provides that the Complaint shall include “a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem....”

20 U.S.C. § 1415(b)(7)(A)(ii)(IV), provides that the Complaint shall also include “a proposed resolution of the problem to the extent known and available to the party at the time.”

20 U.S.C. § 1415(c)(2)(D), provides that within 5 days of receipt of a notice of insufficiency, the hearing officer shall make a determination on the face of the Complaint whether it meets the requirements of subdivision (b)(7)(A).

20 U.S.C. § 1415(c)(2)(E), provides that a party may amend the Complaint only if the hearing officer grants permission, or as otherwise specified.

20 U.S.C. § 1415(c)(2)(E)(ii), provides that the applicable timelines for a due process hearing shall commence anew upon the filing of an amended Complaint.

Moreover, fundamental principles of due process apply to these types of administrative proceedings. As such, a respondent is entitled to know the nature of the specific allegations in order 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

There are three distinct elements, among others, that a Complaint must have to be sufficient. The Complaint must include (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 FAPE to the child (§ 1415(b)(3) and (b)(7)(A)(ii)(III)); (2) facts relating to the problem (§ 1415(b)(7)(A)(ii)(III)); 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)).

In the present case, Petitioner’s Complaint gives a fairly lengthy factual description and attaches several documents, but fails to clearly identify what the actual claims at issue are. The District cannot be expected to guess what legal issues Petitioner believes arise from the statement of facts, nor can it be expected to guess which of those issues Petitioner actually intends to litigate. In particular, the Complaint suggests problems, such as a failure to conduct assessments, but does not

specify which assessments the District should have conducted.¹ Similarly, the Complaint alleges that the District failed to provide appropriate services or placement, but does not identify what services or placement should have been provided. Additionally, Petitioner's proposed resolutions are somewhat vague; for example, the Complaint requests reimbursement "for services provided by Stasick Learning Center," but does not specify what those services are or the cost of those services. This is particularly confusing because the Complaint alleges that Petitioner's parents funded an assessment by Stasick Learning Center, but then does not identify any assessments among the items for reimbursement.

Given these problems, the Complaint is impermissibly vague and does not meet the sufficiency requirements of 20 U.S.C. section 1415(b) and (c).

ORDER

1. The Complaint is insufficient under 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Pursuant to 20 U.S.C. section 1415(c)(2)(E)(ii), Petitioner shall be permitted to file an amended due process complaint.²
3. The amended due process complaint shall conform to the requirements of 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Petitioner fails to file an amended due process complaint within 14 days, the Complaint shall be dismissed.

Dated: June 19, 2006

SUZANNE B. BROWN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

¹ The Complaint also does not identify any proposed assessments among the proposed resolutions. While perhaps Petitioner does not seek any further assessments, the factual description suggests otherwise, and highlights the confusion resulting from Petitioner's failure to clearly identify his issues.

² Filing of an amended complaint restarts the applicable timelines pursuant to 20 USC 1415(c)(2)(E)(ii).