

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009020756

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 23, 2009, attorney Warren Finn, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Long Beach Unified School District (District).¹ On March 17, 2009, attorney Adam J. Newman, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

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; Ed. Code, § 56502, subd. (d)(1).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A). (Ed. Code, § 56502, subd. (c)(2).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the due process hearing officer of the Office of Administrative Hearings (OAH), and the other party in writing, within 15 days of receiving the complaint, that the party against whom the complaint was filed believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

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

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.

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. The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party may be able 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

Student's complaint was filed with OAH on February 23, 2009. However, Student served the complaint at the incorrect address for the District. The District states in its NOI that it received Student's complaint on March 2, 2009. The District's NOI was dated, filed with OAH, and served on March 17, 2009, which is 15 days after it received Student's complaint. Therefore, the District's NOI was filed within the statutorily required timeline.

Student's complaint alleges one issue for hearing regarding the appropriateness of her present placement at a general education high school. Student does not allege sufficient facts because the complaint does not clearly identify if Student's problems at school are related to her unique needs associated with her eligibility for special education services under the criteria of emotional disturbance. While the complaint describes Student's difficulties in attending school and her lack of educational progress, the complaint does not allege why the District cannot meet Student's unique needs at a regular education high school.

As discussed above, a responding party is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the responding party may be able to prepare a response, prepare for a resolution session, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

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: March 23, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings