

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009050479

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On July 9, 2009, Student filed a second amended Due Process Hearing Request (second amended complaint) against the Pasadena Unified School District (District).¹ On July 21, 2009, the District filed a Notice of Insufficiency (NOI) as to Student's second amended complaint.

APPLICABLE LAW

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);² Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that 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.

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.)

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

Student's alleges four issues against the District in her second amended complaint. Previous Orders by OAH determined that Issues One and Two, which remain pled as Issues One and Two in Student's second amended complaint, are sufficiently pled. The remaining issues involve the District's alleged failure to assess Student in all areas of suspected disability and the District's purported denial of FAPE by offering Student placements and services that did not meet her unique needs.

Regarding Issue Three, Student's second amended complaint contains sufficient factual allegations to support her claim that the District failed to assess her in all areas of suspected disability by not conducting an audiological assessment, despite her significant hearing loss, and Student alleges facts explaining how her hearing deficits impacted her behavior. This claim is sufficient to put the District on notice of the issues forming the basis of this claim.

Regarding Issue Four, Student's second amended complaint contains sufficient factual allegations to support her claim that the District's June 17, 2008 individualized educational program (IEP) did not provide Student with a FAPE because the IEP did not address her behavioral, hearing, social-emotional, and cognitive deficits. This claim is sufficient to put the District on notice of the issues forming the basis of this claim.

Therefore, based on the foregoing, Student's second amended complaint is sufficiently pled to put the District on notice as to the basis of Student's claims.

ORDER

1. The second amended complaint is deemed sufficient pursuant to section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: July 28, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings