

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009060162

DETERMINATION OF SUFFICIENCY  
OF FIRST AMENDED DUE PROCESS  
COMPLAINT

On June 2, 2009, Parent on behalf of Student (Student) filed a 24-page Due Process Hearing Request<sup>1</sup> (complaint) naming Elk Grove Unified School District (District) as the respondent.

On June 12, 2009, District filed a Notice of Insufficiency (NOI) as to Student's complaint. On June 16, 2009, Parent filed a Rebuttal to the District's NOI, serving a copy upon the District.

On June 16, 2009, OAH issued an order entitled Determination of Sufficiency of Due Process Complaint, ruling that Student's Issue 3 was sufficient and that Student's Issues 1, 2, 4, 5 and 6 were insufficient. Student was given 14 days to file an amended pleading.

On June 17, 2009, Parent filed a four-page form Request for Mediation and Due Process Hearing, dated June 16. The document is not entitled an amended due process and does not otherwise identify itself as an amended pleading.

On June 26, 2009, District filed a NOI as to Student's June 16 "amended complaint." In doing so, District states it is construing the June 16 filing to be an amended pleading "out of an abundance of caution."

On June 30, 2009, Parent on behalf of Student filed a form Request for Mediation and Due Process Hearing. This pleading attempts to address the insufficiencies set forth in the June 16 order and has been accepted by OAH as an amendment to the pleading.

On July 2, 2009, OAH issued a new Scheduling Order, setting the following dates: 9:30 a.m., August 5, 2009, for mediation; 10:00 a.m., August 17, 2009 for the prehearing conference; and August 25, 2009, for the due process hearing.

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<sup>1</sup> 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).

On July 2, 2009, OAH issued a Determination of Sufficiency of “Amended Due Process Complaint,” finding that the District’s notice of insufficiency referred to a filing which was not in actuality an amended pleading. Instead, the Student’s June 30, 2009, pleading was the Student’s timely filed amendment to the complaint.

On July 15, 2009, District filed a Notice of Insufficiency to Student’s June 30, 2009 amended pleading.

#### 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).)<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A).

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. (§ 1415(f)(3)(C); Ed. Code, § 56505(l).)

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 purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session, mediation, and hearing under section 1415, subsections (e) and (f).

In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent is entitled to know the nature of the specific allegations being made against it, such that respondent 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.)

Though sufficiency review is triggered by a respondent’s notice (§§ 1415(b)(2)(A) & (C)), and a petitioner may respond, the hearing officer shall make a sufficiency determination on the face of the request for due process hearing (Ed. Code, § 56502, subd. (d)(1)).

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<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

## DISCUSSION

The June 30, 2009 amended pleading asserts six issues. The amended pleading frequently refers to attachments but none are attached. For purposes of this NOI, references to attachments are assumed to refer to attachments to the initial complaint of June 4, 2009.

District acknowledges the sufficiency of Issue 2. The June 16, 2009 determination found Issue 3 to be sufficient.<sup>3</sup> The District notice of insufficiency refers to Issues 1, 4, 5, and 6, along with the corresponding proposed resolutions.

Student's Issues 1, 4, 5 and 6 are insufficient.

In Issue 1, Student contends that the District dropped occupational therapy (OT), physical therapy (PT) and adaptive physical education (APE) from his services when he transferred into the District. Further, the District has failed to assess Student in these areas for six years. The initial complaint failed to include any dates as to when the services were allegedly dropped or when the services should have been provided.

The amended Issue 1 now refers to an IEP in 2001. This far exceeds the two-year timeline limitation (§ 1415(f)(3)(C); Ed. Code, § 56505(l)). Also, the string of assertions provides no guidance as to what, if anything, occurred within two years before the filing. Student makes no allegations supporting an exception to the timeline, as provided by section 1415(f)(3)(D). Therefore, Issue 1 continues to be insufficient.

In Issue 4, Student asserts delays in motor skills, further stating Parent requested assessments. Student does not include any request dates, though Student claims to possess confirmations of receipt. Student does not state from which school district the requests were made. As pled, Issue 4 does not sufficiently describe the problem, enabling the District to prepare a meaningful response.

Issue 5 merely refers to Issue 4 and the initial complaint's Issue 5. Student has not added or changed any assertions. Issue 5 remains insufficient.

In Issue 6, Student contends that an apology from a teacher and Student Services is necessary for closure and healing. Issue 6 remains essentially as previously pled and is not an issue which may be addressed on a due process under IDEA or related state law.

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<sup>3</sup> District requests clarification of the June 30, 2009 finding that Issue 3 was sufficient, indicating that the order "reframed" the issue. On a NOI, the hearing officer determines if the complaint is sufficient to meet the requirements of section 1415(b)(7)(A). An Administrative Law Judge (ALJ) therefore culls the pleading in search of sufficient allegations. The ALJ's determination does not restate or reframe an issue; it is merely a finding that the cited assertions meet the minimal standard. The issue's accuracy and associated evidence are within the purview of the due process hearing and its prehearing conference. Further clarification is inappropriate on a subsequent NOI ruling.

As discussed above, a respondent 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 respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing.

Issues 1, 4, 5 and 6 are insufficient.

The proposed resolutions fail to meet the statutorily required standard.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(IV).) The resolutions proposed for Issues 1, 4, 5 and 6 are not well-defined and generally suffer from the same deficiencies as the corresponding issues.

Also, without a statutorily sufficient problem, a proposed resolution cannot meet the statutorily required standard of stating resolutions to the extent known and available to Student at the time.

The proposed resolutions for Issues 1, 4, 5 and 6 do not meet the statutorily required standard.

**Unrepresented parent may request assistance in identifying issues and resolutions.**

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parents request the assistance of a mediator in identifying the issues, they should contact OAH immediately in writing or by calling 916-263-0880 to speak to the staff person assigned to the case.

#### ORDER

1. Pursuant to section 1415(c)(2)(D), the amended pleading's Issues 1, 4, 5 and 6 are insufficiently pled, and District's notice of insufficiency is granted.
2. Pursuant to section 1415(b)(7)(A)(ii)(IV), the proposed resolutions, for Issues 1, 4, 5 and 6, fail to meet the statutory standard.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student may file an amended complaint to correct the deficiencies in Issues 1, 4, 5 and/or 6.
4. 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.

5. If Student does not file a timely amended complaint as to Issues 1, 4, 5 and/or 6, these legal issues will be dismissed and the matter shall proceed to mediation and due process hearing on the two remaining Issues 2 and 3, as set forth in the July 2, 2009 Scheduling Order.

6. Should Student timely file an amended complaint as to Issues 1, 4, 5 and/or 6, the applicable timelines for a due process hearing will restart pursuant to section 1415(c)(2)(E)(ii)(II) and a new Scheduling Order shall issue.

Dated: July 20, 2009

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings