BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. MENLO PARK CITY ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2009101420 DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 26, 2009, Student filed a Due Process Hearing Request[1] (complaint) naming Menlo Park City Elementary School District (District) as the respondent. District timely filed a Notice of Insufficiency (NOI) on October 29, 2009. As discussed below, the complaint is sufficient.

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.)

Here, the complaint includes the following claims:

1) Whether Student was denied a FAPE because the February 27, 2008 IEP offered an insufficient amount of speech therapy and occupational therapy.

2) Whether Student was denied a FAPE because the April 30, 2008 IEP offered:
   a. an inappropriate placement;

[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.

b. an insufficient amount of speech therapy and occupational therapy.

3) Whether Student was denied a FAPE because the District failed to assess her for physical therapy needs as discussed at the April 30, 2008 IEP team meeting.

4) Whether Student was denied a FAPE because the April 29, 2009 IEP offered:
   a. an inappropriate placement;
   b. an insufficient amount of speech therapy and occupational therapy.

5) Whether Student was denied a FAPE during the 2009-2010 school year because the District failed to implement her last agreed-upon IEP dated May 30, 2007.

Student has alleged facts related to each of the above problems and also alleged proposed resolutions. Contrary to the District's contentions, there is no requirement that Student allege exactly how the amount of speech therapy and occupational therapy are insufficient. For purposes of putting the District on notice of Student's claims, it is sufficient to allege, as Student has, that the services offered by the District were not appropriate to meet Student's severe needs in these areas. Thus, the complaint is sufficient.

ORDER

1. The complaint is sufficient.

2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: November 03, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings