

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CABRILLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009120500

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On December 11, 2009, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent. On December 15, 2009, District filed a timely Notice of Insufficiency (NOI) as to Student's complaint. As discussed below, the complaint is sufficient.

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 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.)

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

The complaint alleges the following issues: (1) District failed to properly assess Student; and (2) as a result of incorrect assessments, District's IEP objectives and its plan for implementing them were also incorrect and failed to offer Student a FAPE. As a proposed resolution, Student seeks reimbursement for private school placement.

Attached to the complaint is a letter dated July 6, 2009 from Student's attorney to District, which clarifies that the offer of FAPE at issue was contained in the IEP dated April 9, 2009, and that Parents objected to it by letters dated May 13, 2009 and June 1, 2009.

The complaint is sufficient to put respondents on notice of the issues forming the basis of the complaint, such that respondents can respond to the complaint and participate in a resolution session. The IDEA does not require that the person or entity filing a claim plead facts with particularity. It requires only a short and plain statement of the claims and the grounds upon which they rest. In other words, the claim must answer the questions who (i.e. the District), what (what are you claiming), how (what in general are the salient facts regarding your claim/the grounds) and when (timeframe). Thus, the complaint is sufficient to give respondents notice of the nature of the problem relating to the provision of a free appropriate public education (FAPE).

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: December 17, 2009

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings