

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009061459

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On June 30, 2009, attorney Ralph O. Lewis, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Corona-Norco Unified School District (District).¹ On July 14, 2009, attorney Christopher J. Fernandes, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's 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

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.

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 alleges five issues against the District. The issues involve the District's purported denial of FAPE by failing to make an individualized educational program (IEP) offer of services and placement from July 14, 2008 through January 2009, and District's alleged failure to implement the January 2009 IEP.

Regarding Issue One, Student's complaint contains sufficient factual allegations to support his claim that the District failed to make an IEP offer of services and placement from July 14, 2008 through January 2009, and his claim that the District should reimburse Student's parents for the specified privately obtained services. This claim is sufficient to put the District on notice of the issues forming the basis of this claim.

Regarding Issue Two, Student's complaint does not contain sufficient factual allegations to provide the required notice to District because the complaint does not state why Student needed a Lindamood-Bell reading program during the 2009 extended school year to address his unique needs, or why the program offered by District was insufficient to provide FAPE.

Regarding Issue Three, Student's complaint does not contain sufficient factual allegations to provide the required notice to District because the complaint is not clear as to whether the District failed to offer Student an applied behavior analysis (ABA) program for 52 weeks a year, 40 hours a week, in the January 2009 IEP, or if parties agreed on this program in the January 2009 IEP and the District failed to provide this ABA program. Additionally, Student fails to allege why he requires such an intensive ABA program to meet his unique needs.

Regarding Issue Four, Student's complaint does not contain sufficient factual allegations to provide the required notice to District because the complaint does not state the time period for which Student's parents seek reimbursement for Student's attendance at Crossroads Academy. Additionally, Student does not allege in the complaint whether Student attended Crossroads Academy because the District failed to make an IEP offer from July 14, 2009 through January 2009, or because the District did not implement the January 2009 IEP.

Finally, regarding Issue Five, Student's complaint contains sufficient factual allegations to support his claim that the District failed to provide Student with speech and language services from July 14, 2008 through the present, and why he requires this service. 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 Issues One and Five are sufficiently pled to put the District on notice as to the basis of Student's claims.

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. Student's complaint fails to provide this notice in Issues Two, Three and Four.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Issues One and Five of Student's complaint are sufficient.
2. Pursuant to section 1415(c)(2)(D), Issues Two, Three and Four of Student's complaint are insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³
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 fails to file a timely amended complaint, the hearing shall proceed only on Student's Issues One and Five.

Dated: July 20, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.