

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL
DISTRICT; CORONADO UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012050894

ORDER GRANTING MOTION TO
AMEND COMPLAINT; DENYING
STUDENT'S MOTION TO VACATE
ORDER

On May 22, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing. On June 8, 2012, Student filed an amended Request for Due Process Hearing (complaint).¹ Student's complaint named the Sweetwater Union High School District (SUHSD), the Coronado Unified School District (CUSD) and Ronald Lopez as respondents.² On June 22, 2012, the CUSD filed a motion to dismiss, or in the alternative a Notice of Insufficiency (NOI) for this matter. Also on June 22, 2012, the SUHSD filed a NOI as to Student's complaint.

On June 25, 2012, OAH determined that the complaint had been insufficiently pled and granted the respondents' NOIs'. OAH also determined that CUSD's motion to dismiss was moot because Student's complaint had been insufficiently pled and because OAH had granted respondents' NOIs'. OAH ordered that Student had 14 days to file an amended complaint or this matter would be dismissed.

On June 25, 2012, Student filed a second amended complaint (second amended complaint). Student's second amended complaint was not addressed by OAH's June 25, 2012 Order which found only that Student's complaint was insufficient. Neither the CUSD nor the SUHSD filed an opposition to Student's second amended complaint.

On June 26, 2012, Student submitted a declaration by his counsel complaining that Student had not been properly served the NOIs' and the motion to dismiss. Also on June 26,

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 Student's second amended complaint names only the SUHSD and CUSD as respondents.

2012, Student requested a status conference to discuss the alleged improper service of the NOIs and motion to dismiss. On June 27, 2012, Student filed a motion to vacate OAH's June 25, 2012 Order of Determination of Insufficiency of complaint, based upon the respondents' alleged improper service of the NOIs. On June 29, 2012, the CUSD and SUHSD each filed an opposition to Student's motion to vacate.

APPLICABLE LAW AND DISCUSSION

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)³ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Here, Student was granted permission by the undersigned Administrative Law Judge (ALJ) to amend his complaint within 14 days of OAH's June 25, 2012 Order of Determination of Insufficiency of complaint (Order). Student submitted his second amended complaint on the same day, which complied with the Order. Although Student failed to provide a corresponding motion to amend, Student timely submitted his second amended complaint. Therefore, Student's second amended complaint is timely and is granted. The second amended complaint shall be deemed filed on the date of this order.

With regard to Student's motion to vacate, a complaint must be facially sufficient. Here, Student's complaint was deemed insufficient on its face. From the face of the complaint it is not clear what Student allegedly was not provided by CUSD or SUHSD, or when the deprivation of special education occurred. It is not relevant that Student argues he was not afforded an opportunity to respond to the NOIs', as a response to a NOI is not contemplated under the Individuals with Disabilities Education Act. Rather, sufficiency is judged solely from the face of the complaint. Here, the complaint on its face was not sufficient as to CUSD or SUHSD. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)). As such, Student was not harmed by not having an opportunity to respond to the respondents' NOIs'. Therefore, Student's motion to vacate order is denied.

ORDER

1. Student's motion to amend is granted. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.
2. Student's motion to vacate Order is denied.

³ All statutory citations are to Title 20 United States Code unless otherwise indicated.

Dated: July 02, 2012

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings