

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009010574

ORDER DENYING MOTION TO
DISMISS FOR LACK OF
SUFFICIENCY

On January 22, 2009, Parents, on behalf of Student, filed with the Office of Administrative Hearings, Special Education Division (OAH), a Mediation and Due Process Hearing Request (Complaint). The Complaint states that Student's District of Residence is San Diego Unified School District, but the Student served the Complaint upon Poway Unified School District.

On February 3, 2009, Poway Unified School District filed a letter request with OAH seeking an order dismissing the Complaint based upon lack of sufficiency and the two year statute of limitations. Student has not filed a response to this request.

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).)¹ 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 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 and mediation 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

¹ All statutory citations are to Title 20 United States Code unless otherwise noted.

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.)

DISCUSSION

In this case, Student's Complaint comports with the foregoing standard. The Complaint alleges that the District failed to provide FAPE for the 2007-2008 and 2008-2009 school years for (1) the failure to offer any appropriate placement, (2) the failure to offer placement in the Least Restrictive Environment (LRE), (3) the failure to provide appropriate services that would have allowed Student to function in the LRE, (4) the failure to complete the IEP process in a timely manner, (5) the development of a placement offer outside of the IEP meeting process, and (6) the failure to make a specific offer of placement sufficient to satisfy the requirements of *Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519. This is sufficient notice of the nature of the problem in this case such that the School District can prepare a defense, and participate in a resolution session and mediation in the matter.

Poway Unified School District contends that it cannot determine if the two year statute of limitations applies in this case. (see 34 C.F.R. § 300.507(a)(2)(2006); Ed. Code, § 56505, subd. (1).) The Student filed the pending Complaint with OAH on January 22, 2009. The two year statute of limitations, therefore, is January 22, 2007. This date is in the middle of the 2006-2007 school year. Student's Complaint concerns the 2007-2008 and 2008-2009 school year.

The request for dismissal is denied.

ORDER

1. The complaint is deemed sufficient pursuant to section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: February 18, 2009

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings