

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN RAMON VALLEY UNIFIED  
SCHOOL DISTRICT

OAH CASE NO. 2009031118

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On March 20, 2009, Parents, on behalf of Student, filed a Request for Due Process Hearing<sup>1</sup> (complaint) naming San Ramon Valley Unified School District (District) as the respondent.

On April 6, 2009, respondent District filed a Notice of Insufficiency (NOI) as to Issues I and IV of the Petitioners' complaint. On April 7, 2009, Student filed Opposition to Respondent's Notice of Insufficiency and District filed its Reply in Support of Notice of Insufficiency as to Issues I and IV.

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).)<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A).

The complaint is deemed sufficient unless the respondent notifies the due process hearing officer (OAH) and the other party in writing, within 15 days of receiving the complaint, that the respondent believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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

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<sup>1</sup> 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).

<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

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, mediation, and hearing 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 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.)

Though sufficiency review is triggered by a respondent's notice (1415(b)(2)(A) & (C)), and a petitioner may respond, the hearing officer shall make a sufficiency determination on the face of the request for due process hearing (Ed. Code, § 56502, subd. (d)(1)).

## DISCUSSION

### District's Notice of Insufficiency Is Timely Filed.

The Student's Opposition to Respondent's Notice of Insufficiency asserts that the District's NOI was filed late (i.e., not within 15 days) and therefore unable to trigger a sufficiency review. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) In its Reply in Support of Notice of Insufficiency, District claims that its NOI was timely filed.

The proofs of service establish the service and filing dates. Student's complaint was filed and served on March 20, 2009. The fifteenth day thereafter was April 4, 2009, a Saturday. OAH offices are closed for business on Saturdays and Sundays. The District's NOI was filed on Monday, April 6, 2009.

Whenever a time is stated within which an act is to be done, the time is computed by excluding the first day and including the last day. If the last day is any day OAH is closed for business, that day is also excluded. (Cal. Code Regs., § 1004(c); cf. Code Civ. Proc., § 12a(a).)

OAH was closed on April 4 and April 5, 2009. These two days are excluded from computing the time limitation for filing an NOI. Therefore, the fifteenth day upon which the District could timely file its NOI was Monday, April 6, 2009.

Student's request that the District's NOI be deemed untimely filed is denied.

Student's Legal Issues I and IV are insufficient.

Student's complaint alleges four claims, identifying them as Legal Issues I through IV, as follows:

- I. Respondents denied Student a FAPE by failing to assess him in all suspected areas of disability.
- II. Respondent denied Student a FAPE by failing to create a program addressing his unique needs.
- III. Parents are entitled to reimbursement for their unilateral placement of Student.
- IV. Respondent denied Student a FAPE by failing to include Parents in the a [sic] decision-making process regarding FAPE or prior written notices, thus violating Student's procedural rights.

Respondent District directs its Notice of Insufficiency to Issues I and IV, only. Issues II and III are therefore not addressed or affected by the ruling herein.

Issues I and IV of the Student's complaint are insufficiently pled in that they fail to provide District with the required notice of a description of the problem and the facts relating to the problem.

With respect to Legal Issue 1, Student generally asserts that the District failed to assess in all suspected areas of disability. However, Student does not provide dates or reference IEPs. Without time parameters, the legal significance of the section's allegations is left to conjecture.

Additionally, Student fails to set forth adequate facts in support of the very general assertion that the District did not properly assess. Mere references to "odd behaviors" and impaired social interactions "since at least Kindergarten" are insufficient and require some context by additional statements of fact and time.

Similarly, Student makes no reference to time or IEP dates in Legal Issue IV. Student asserts that the District did not provide certain notices, thus failing to include the Parents in the decision-making process. Student quotes section 1415(f)(3)(E)(11) in support of the assertion. Yet, Student does not state what requisite notices the District failed to give, when such notices should have been provided, or how Parents were denied an opportunity to participate.

As discussed above, a respondent 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 respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing.

The IDEA does not require that a person or entity filing a claim plead facts with particularity but rather the requirement, in essence, is to file a short and plain statement of the cause of action and the grounds upon which it rests. In other words, the claim must answer the questions who (i.e. district), what (what one is claiming), how (what are the important facts regarding the claim/grounds), and when (timeframe). Legal Issues I and IV of Student's complaint fail to provide this notice.

For the reasons described above, Legal Issues I and IV of the Student's complaint are insufficient because they do not comply with the requirements of Section 1415(b)(7).

### ORDER

1. Pursuant to section 1415(c)(2)(D), Student's Legal Issues I and IV are insufficient.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student may file an amended complaint to correct the deficiencies in Legal Issues I and IV.
3. 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.
4. If Student fails to file a timely amended complaint, the hearing shall proceed on Student's remaining Legal Issues II and III, and the Proposed Resolutions, none of which were the subject of District's insufficiency notice.
5. The presently assigned dates for mediation, prehearing conference, and due process hearing are to remain as calendared.
6. Should Student timely file an amended complaint, all dates set in this matter will be vacated pursuant to section 1415(c)(2)(E)(ii)(II), which provides that the filing of an amended complaint will restart the applicable timelines for a due process hearing

Dated: April 13, 2009

/s/  
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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings