

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. 2009081034

RULING ON DISTRICT'S NOI

On August 26, 2009, Student filed a Due Process Hearing Request¹ (complaint). On September 4, 2009, San Ramon Valley Unified School District (District) filed a Notice of Insufficiency (NOI). As discussed below, the complaint is sufficient as to Problems One, Three and Four only.

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint by filing an NOI. (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 a proposal to initiate or change 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.)

Here, Problem One in the complaint alleges that parents disagree with Student's eligibility under the category of emotional disturbance and that Student should be eligible under the category of OHI based on ADHD. As a proposed remedy, Student seeks

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.

accommodations and modifications to address ADHD. These allegations are sufficient to put the District on notice of the problem. No more is required.

Problem Two in the complaint alleges that when Student transferred from New Jersey, he should have received the same educational program under section 504 that he had there. As a remedy, Student seeks adoption of a section 504 plan from another school district. By referring to section 504, Problem Two on its face does not allege a special education issue and is insufficient to give the District notice of how Student alleges his rights under the IDEA were violated.

Problem Three alleges that parents were not allowed to participate in the development of Student's IEP that found him eligible under the ED category because they were not given an opportunity to address why OHI was a more accurate eligibility classification. As a remedy, Student requests that the District "allow collaboration." Although brief, Problem Three is sufficient to put the District on notice.

Problem Four alleges that a current proposed IEP does not address Student's needs in mathematics. As a remedy, Student seeks accommodations and modifications in Algebra. Although brief, Problem Four is sufficient to put the District on notice.

Problem Five alleges that an IEE was delayed and that District failed to provide parents with information about where to obtain an IEE. As a remedy, Student requests information about where to obtain an IEE. Problem Five does not contain sufficient factual allegations to put the District on notice such as the date of parent's IEE request and what District evaluation parents disagreed with. Problem Five is insufficient.

Problem Six alleges "District continues to request additional information from doctors to delay services." As a remedy, Student requests that the District adopt the recommendations of Student's current doctors. Problem Six does not allege with specificity a problem relating to the identification, assessment, or provision of FAPE to Student, and is insufficient.

ORDER

1. Problems One, Three and Four are sufficient.
2. Problems Two, Five, and Six were not sufficiently pleaded to put the District on notice of Student's claims.
3. Student may file an amended complaint within 14 days of the date of this order to attempt to cure the deficiencies in Problems Two, Five and Six.³ Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may

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

request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in amending their due process hearing request.

4. If Student does not file a timely amended complaint, the hearing shall proceed only on Problems One, Four and Five.

Dated: September 09, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings