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. 2009090809 DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On September 18, 2009, James D. Peters, Advocate for Student (Student), filed a Due Process Hearing Request[1] (complaint) naming Corona-Norco Unified School District (District) as the respondent.

On October 2, 2009, Rachel C. Disario, Attorney for the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

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).)[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 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). (See H.R.Rep. No. 108-77, 1st Sess. (2003) [the

[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.

House Committee on Education and the Workforce stated that the requirement of a clear and specific notice is essential to make the complaint process work in a fair and equitable manner]; Sen. Rep. No. 108-185, 1st Sess. (2003) [the Senate Committee on Health, Education, Labor and Pensions stated that the purpose of the sufficiency requirement is to ensure that the respondent will have an awareness and understanding of the issues forming the basis of the complaint, to prevent the respondent from having to prepare for any and every issue that could possibly be raised, and to give the respondents sufficient information to provide specific responses and to participate in resolution sessions and mediation].) 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.)

DISCUSSION

Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. In general, Student's complaint alleges that the District Denied Student a FAPE for the 2008-2009 and 2009-2010 school years. Student's complaint alleges eight claims, as follows:

1. Student alleges the District failed to offer Student placement in general education, representing the least restrictive environment (LRE). Student has provided no specific facts to support this contention. The complaint fails to identify which IEP is in question, what the District offered each year, and why the offer is inappropriate for Student. Further, the only identifiable information provided by Student references documents, reports and events prior to September 2007, which, for substantive purposes, are barred by the statute of limitation.[3]

2. Student alleges that the District failed to write appropriate goals for Student. Student provides no factual allegations to support this contention. Specifically, Student fails to identify which IEP is in question, what goals were written and why the goals were inappropriate.

3. Student alleges that the District failed to provide Student with appropriate speech and language services (LAS). Again, Student provides no factual allegations to support this contention. Specifically, Student fails to identify which IEP is in question, what LAS were offered, and why the LAS offered were inappropriate.

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[3] Additionally, on page 6 of the complaint, Student has provided an outline entitled "Respondent's Evaluation and Services." Student has failed to provide the information in sentence format, and has failed to identify where and when he obtained this information. Further, Student failed to delineate what information is "evaluation" and what information represents "services."

4. Student alleges that the District failed to provide Student with appropriate ABA services. Student provides no factual allegations to support this contention. Specifically, Student fails to identify which IEP is in question, what ABA services were offered by the District, and why Student requires ABA.

5. Student alleges that the District denied Student direct occupational therapy services (OT). Student provides no factual allegations to support this contention. Specifically, Student fails to identify which IEP is in question, what OT services were offered by the District and why Student required OT.

6. Student alleges that the District failed to provide appropriate parent training. Again, Student fails to allege any facts to support this contention. Specifically, Student fails to identify which IEP is in question, what parental training was required, what was offered by the District, or how the parent training denied Student a FAPE.

7. Student alleges that the District failed to develop an appropriate IEP document for Student. This allegation is redundant to all of Student's prior claims, and fails to offer any factual allegations.

8. Student alleges that the District failed to provide Student with appropriate assistive technology (AT). Student fails to allege any facts to support this contention. Specifically, Student fails to identify which IEP is in question, whether the District offered Student any AT, what AT devices Student required and why he required them.

As stated above, a respondent is entitled to know 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. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and the District's notice of insufficiency is granted.

2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.[4]

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

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: October 05, 2009

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings