

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009091890

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On September 28, 2009, James D. Peters III, advocate for Student, filed a Due Process Hearing Request¹ (complaint) against the Riverside Unified School District (District). On October 21, 2009, Jack B. Clarke Jr., attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

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);² Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party 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.)

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.

DISCUSSION

Timely Filing of NOI

Student's complaint was filed on September 28, 2009. The proof of service attached to the complaint states that Student served the complaint upon District via facsimile on September 28, 2009. In the NOI, District asserts that it did not receive the complaint until October 6, 2009. On October 22, 2009, OAH requested that Student provide proof of facsimile confirmation for service of the complaint. At the same time, OAH requested that District provide a sworn declaration regarding receipt of service of the complaint.

On October 22, 2009, District filed the declaration of Cassandra J. Owen. Ms. Owen states that on September 29, 2009, she was contacted by the District regarding the complaint in this matter. District provided her with 5 out of 16 pages of the facsimile it received from Student on September 28, 2009. District did not receive a correct and complete copy of the complaint. District contacted Student's counsel's office on September 29, 2009, to obtain a complete copy of the complaint. Ms. Owen states that the District continued to try to obtain a copy of the complaint from Student. However, not having been able to obtain a copy by October 6, 2009, Ms. Owen contacted OAH and was provided with a copy of the complaint.

Student did not provide a response to OAH's request for documentation regarding the facsimile confirmation.

Partial service of a document does not satisfy the service requirements. (Cal.Code.Reg., tit. 5, § 3083.) Service of the complaint upon District, in this matter, occurred on October 6, 2009, when District obtained a copy of the complaint from OAH. Therefore, District's NOI is deemed to be timely filed.

Notice of Insufficiency

Student is a six year old child who is eligible for special education under the category of autistic-like. Student's complaint alleges 16 claims, which are phrased in question and answer format. Each claim focuses on a specific placement or service, e.g. classroom placement, or occupational therapy, or speech and language therapy, and vision therapy. Some claims state a violation for the 2008-2009 and 2009-2010 school years (SY). Some claims do not state a time period.

In a separate section of the complaint, Student sets out a description of his deficits, and needs. The narrative is interspersed with descriptions of events in Student's educational and developmental history. However, Student fails to provide any dates by which his factual allegations can be ascertained. Student states that at every IEP meeting "from 2008 to the present," District failed to respond to Student's request for services. However, Student fails to identify the IEPs by date or describe the District's offer and his disagreement. In a

separate section, Student describes the offer contained in one IEP, but fails to provide a date for the IEP or why describe why Student disagreed with the IEP. Student fails to provide a causal nexus between the facts he has alleged and the claims he asserts.

In some of his claims, Student fails to provide factual allegations to support the claims. For example, Student asserts he has been denied a FAPE because he was not provided services such as vision therapy, equestrian therapy, aqua therapy, counseling services, music therapy and auditory integration therapy. However, Student has not provided any factual basis for these claims.

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. 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 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.³
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 complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: October 26, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

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