

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL
DISTRICT, GREENFIELD UNION
SCHOOL DISTRICT, AND KERN
COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH CASE NO. 2014040234

ORDER GRANTING IN PART AND
DENYING IN PART BAKERSFIELD
CITY SCHOOL DISTRICT'S MOTION
FOR RECONSIDERATION

On April 2, 2014, Student filed a Due Process Hearing Request¹ (complaint) naming, among other parties, the Bakersfield City School District (Bakersfield). The proof of service filed with Student's complaint indicated that the complaint had been served on Bakersfield on April 1, 2014.

On April 17, 2014, Bakersfield filed a Notice of Insufficiency (NOI) as to Student's complaint.

On April 21, 2014, the Office of Administrative Hearings found Student's complaint sufficient as to Bakersfield based on the fact that Bakersfield's NOI was filed 16 days after April 1, 2014, the date on which Student's proof of service indicate he had served his complaint on Bakersfield.

On May 2, 2014, Bakersfield filed a Motion for Reconsideration of the Order finding Student's complaint sufficient. Bakersfield included copies of the complaint, which Student served on it by fax. The top of the complaint indicates that the fax was not sent until April 2, 2014, in spite of the fact that the proof of service indicates service was made on April 1.

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).

APPLICABLE LAW AND DISCUSSION

Motion for Reconsideration

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

In this case, Bakersfield has demonstrated that the Student served his complaint on it a day later than indicated in the proof of service. Bakersfield has demonstrated that its NOI was filed within 15 days of the service of the complaint. To the extent that the NOI was denied as being untimely, Bakersfield's motion for reconsideration is GRANTED. However, as explained below, since Student's complaint is substantively sufficient as to Bakersfield, the Motion for Reconsideration as to the substance of Student's complaint is DENIED.

Substantive Sufficiency of Student's Complaint

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code 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.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

The facts alleged in Student’s complaint are sufficient to put Bakersfield on notice of the issues forming the basis of the complaint. Although Student’s complain is somewhat confusing because there are two sets of allegations against Bakersfield, one set in the body of Student’s complaint, and the second set under specific allegations, the two sets of allegations identify the issues and give adequate related facts about the problem to permit Bakersfield to respond to the complaint and participate in a resolution session and mediation.

Student first alleges that Bakersfield, as well as other named school districts, denied him a free appropriate public education (FAPE) by: (1) denying him compensatory speech time; (2) denying him assessment for proper placement because an occupational therapy assessment administered by Bakersfield was not comprehensive; (3) failing to provide progress logs that Bakersfield agreed to provide; and (4) denying an interpreter and English translations of documents to Student’s parent. These four allegations are specific enough to inform Bakersfield of the allegations against it and to permit it to mount a defense to the allegations.

Student makes the following additional allegations as to Bakersfield:

1) Bakersfield failed to timely asses him in the area of occupational therapy. This issue is duplicative of issue (2) above, and is equally sufficient.

2) Bakersfield denied Student a FAPE and significantly impeded his parent’s right to meaningfully participate in the IEP process by failing to translate individualized education programs. This issue is duplicative of issue (4) above and is equally sufficient.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

For these reasons, Bakersfield's Motion for Reconsideration is denied as to the substantive sufficiency of Student's complaint as to Bakersfield.

ORDER

1. Bakersfield's Motion for Reconsideration is GRANTED as to the finding that Student's complaint was sufficient because Bakersfield did not timely file its NOI.

2. Bakersfield's Motion for Reconsideration is DENIED as to the substance of Student's Complaint.

3. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii) as to Bakersfield.

4. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: May 6, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings