

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALVORD UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010090164

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 01, 2010 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Alvord Unified School District (District).

On September 22, 2010, Adam J. Newman, Esq., filed a Notice of Insufficiency (NOI) on behalf of the District, as to Student's complaint.

APPLICABLE LAW

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 section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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.⁴ These requirements prevent vague and confusing complaints, and promote fairness by providing 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 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁸

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(IV)).

DISCUSSION

Student’s complaint was filed on September 1, 2010. The District does not indicate in its NOI when it received Student’s complaint. The District’s NOI was dated, filed with OAH, and served on September 22, 1020, which is more than 15 days after Student filed her complaint. The OAH record, however, does not include a Proof of Service indicating that the District was served with the complaint. The OAH file indicates the District initially received notice of Student’s complaint on September 9, 2010, with the Scheduling Order served on both parties by OAH. Therefore, the District’s NOI is timely filed.

Student’s complaint alleges that Student has been denied a position as a bass drummer in the school’s marching band. The complaint, however, provides no information as to how such discrimination is related to Student’s IEP; whether Student’s current IEP provided for Student’s placement in the marching band; or how Student has been denied educational benefit by not participating in the marching band. Further, Student provides no suggestion of remedy for the District to consider. Therefore, Student’s complaint is insufficiently pled as it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

Student's complaint provides no proposed resolution. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(IV).) Parent indicates that she is currently at a loss as to what could possibly resolve this matter, and offers no inkling of resolution or remedy. As such it is insufficient.

ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁹
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: September 23, 2010

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.