

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CENTRAL UNIFIED SCHOOL DISTRICT,
SHASTA COUNTY OFFICE OF
EDUCATION and FRESNO COUNTY
CHILDREN'S MENTAL HEALTH

OAH CASE NO. 2010100739

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 3, 2010, the Office of Administrative Hearings (OAH) granted Student's request of January 21, 2011, to file her second amended complaint (complaint) which added Shasta County Office of Education (SCOE) as a party. On February 3, 2011, SCOE filed a Notice of Insufficiency (NOI) 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.¹ 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.² These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ 20 U.S.C. § 1415(b) & (c).

² 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.³

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

DISCUSSION

In her complaint, Student claims that Central Unified School District (District) denied her a FAPE for the 2009-2010 school year because it failed to conduct a timely assessment to determine her eligibility for special education, and also failed to provide her with placement and services she needed to address her mental health issues. Student further claims that both Fresno County Children’s Mental Health (FCCMH) and the District failed to offer her an appropriate educational placement for the 2010-2011 school year that would address her mental health needs and provide her with appropriate therapy.

According to Student, in October 2010, the District and FCCMH placed her at Victor Treatment Center (VTC) in Shasta County. VTC operates a nonpublic school in which Student was enrolled, North Valley School (North Valley). Once she was placed in a residential treatment center in Shasta County, SCOE also became a responsible agency for ensuring that Student would be provided with a FAPE. (Ed. Code § 56156.4, subd. (c).) Student contends that the most appropriate placement for her is Provo Canyon School (Provo Canyon), a residential treatment program in Utah that is certified by California, and which

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

accepted her on October 6, 2010. However, at an IEP meeting held by SCOE on December 3, 2010, the District, SCOE and FCCMH refused to place Student at Provo Canyon, and affirmed her placement at VTC, and enrollment at North Valley.

Student contends that VTC and North Valley is an inappropriate educational placement because sexual offenders attend North Valley, and she is not a sexual offender, but rather the victim of past sexual abuse. Student claims that she does not attend classes at North Valley, but instead wanders the campus grounds, and further claims that she is not being provided with appropriate therapy to address her mental health needs, and therefore is not receiving a FAPE. Student also contends that she is not receiving appropriate therapeutic services from VTC, and recently attempted to commit suicide.

In its NOI, SCOE argues that the second amended complaint is insufficient because it does not provide information about her current IEP, and why it is inappropriate, nor does it differentiate between the therapeutic aspects of VTC and North Valley. However, Student has alleged many detailed facts that, if proven, establish that overall, the placement at VTC and placement at its associated school is inappropriate, and Student is not receiving a FAPE there. The issue is placement at VTC, which includes placement at North Valley. If VTC was providing Student with the mental health services she requires, the issue would be the inappropriateness of North Valley, but that is not what Student has alleged. The facts alleged in Student's complaint are sufficient to put the all of the parties on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit the District, SCOE and FCCMH to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of claims in the second amended complaint is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: February 8, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings