

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. 2010110713

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 18, 2010, Student filed a Due Process Hearing Request¹ (complaint), which included a request for an expedited due process hearing, against the Alvord Unified School District (District).² On December 3, 2010, the District filed a Notice of Insufficiency (NOI) as to Issue Two in Student's hearing request.³

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ 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,

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 The Office of Administrative Hearings inadvertently treated Student's hearing request as only a request for an expedited hearing. Issue One in the hearing request, mislabeled as Issue Two in the document, requested an expedited hearing, and Issue Two, mislabeled as Issue One, did not contain any request for an expedited hearing.

³ NOIs are not available for expedited hearing requests because there is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to title 20 United States Code section 1415(k).

⁴ 20 U.S.C. § 1415(b) & (c).

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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

DISCUSSION

Student alleges in Issue Two that the District denied him a FAPE because it failed to provide him with an adequate educational placement and program. Student’s complaint is insufficiently pled as the complaint does not adequately describe Student’s educational placement and program, and why they are not adequate to address his unique needs. The complaint does not contain a description of Student’s educational placement and program, and the type of placement and program Student requires to meet his unique needs. Therefore, Issue Two 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.

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

ORDER

1. Issue Two in Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II) as to Issue Two.¹⁰
3. The amended complaint for Issue Two shall comply with the requirements of title 20 United States Code 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, Issue Two will be dismissed.
5. The matter shall proceed as scheduled as to Student's expedited hearing request in Issue One.

Dated: December 8, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing for Issue Two.