

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010120259

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 3, 2010 Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent.

On December 13, 2010, District 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.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

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(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.⁴

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

DISCUSSION

Student’s complaint states two issues.⁸ The second issue states that District has failed to provide a FAPE. District’s NOI relates solely to the FAPE issue. As discussed below, District’s NOI is granted.

Student’s FAPE allegations state only that Student, who has developmental, emotional and behavioral problems, has been underserved and improperly placed. It requests, as a resolution, placement in a small, highly structured placement in a nonpublic school for young children with a high staff-to-student ratio, and mental health services. It does not, however, describe what placement and services District offered to Student, nor why

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

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).

⁸ Student’s first issue describes problems involving discipline, which must be litigated on an expedited basis. (20 U.S.C. § 1415(k)(4)(B).) Despite the presence of both expedited disciplinary and non-expedited FAPE issues in the complaint, OAH erroneously set this matter only for a non-expedited hearing. Subsequent to the filing of the complaint, the parties entered into an agreement for Student’s return to school and the rescission of the disciplinary proceedings. Therefore the expedited issue has been withdrawn.

these were inappropriate, nor does it specify the time frame, nor which IEPs are at issue. Thus, it does not provide District with an awareness and understanding of the issues forming the basis of the complaint.

ORDER

1. Issue two of 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: December 14, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

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