

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011020861

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 24, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming the Mt. Diablo Unified School District (District).

On March 2, 2011, the District timely 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

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).

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

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 Individuals with Disabilities Education Act 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 Allegations are Insufficient

Student’s complaint does not contain specific issues or allegations addressing specific reasons why Student believes the District has violated his rights or otherwise denied him a FAPE. Rather, Student’s complaint contains a list of incidents which occurred during the month of February 2011, but no explanation as to how or why Student suffered a loss of education because of what happened on that date. For example, Student states that a “Ms. B.” did not supply daily sheets per his individualized education program (IEP). However, Ms. B. is not identified, the specific IEP is not identified, and there is no explanation of what the daily sheets are or what the IEP in question required Ms. B. to do with them. In another paragraph, Student states that Ms. B. refused to allow a substitute aide to watch “T.” Student does not identify who “T” is (Student’s first name does not begin with the letter “T.”), and does not state why this alleged failure violated his right to a FAPE.

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).

Each of the paragraphs of Student's complaint suffers from the same deficiency as those mentioned above. The allegations are vague and confusing, do not define the issues, and do not inform the District of why it has allegedly violated Student's rights, preventing it from properly responding to or defending against Student's contentions. Student's complaint is therefore insufficient in its entirety.

Student's Proposed Resolutions are Sufficient

The District also challenges Student's proposed resolutions, asserting that the majority of them request remedies that are beyond the jurisdiction of the Office of Administrative Hearings (OAH) to order. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met this standard with his proposed resolutions. To the extent that they are beyond the jurisdiction of OAH, an NOI is not the proper forum to determine a matter of OAH jurisdiction.

Mediator Assistance for a Non-Represented Parent

A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

If Student's parent wishes to obtain assistance from OAH, she may contact OAH in writing or she may call OAH at (916) 263-0880 for more information.

ORDER

1. 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).⁹
3. The amended complaint 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.

8 Ed. Code, § 56505.

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

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.
6. If Student's parent wishes assistance in preparing an amended complaint, she should write to OAH to request such assistance or contact OAH at the phone number indicated above.

Dated: March 8, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings