

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2011031087

ORDER OVERRULING DISTRICT'S
OBJECTION TO STUDENT'S
MOTION TO AMEND COMPLAINT;
ORDER DETERMINING STUDENT'S
SECOND AMENDED COMPLAINT TO
BE INSUFFICIENT AS PLED

On March 29, 2011, the Office of Administrative Hearings (OAH) issued an order finding Student's initial due process hearing request (complaint) to be insufficient. On March 30, 2011, Student filed a notice of amended complaint. The Palmdale School District (District) filed a notice of insufficiency as to Student's amended complaint on April 1, 2011. On April 6, 2011, OAH issued an order finding Student's amended complaint to be insufficient.

Before OAH issued its order finding Student's amended complaint to be insufficient, Student filed a document entitled Notice of Motion and Supplemental Amended Complaint. It appears that Student intends this pleading to serve as a motion to amend his complaint. On April 6, 2011, the District filed a response to Student's supplemental complaint (referred to here as Student's second amended complaint) in which it objected to Student's motion to amend the complaint on the grounds that the second amended complaint still is insufficient as pled. As explained below, to the extent the District objects to Student's motion to amend, that objection is overruled. However, to the extent that the District's response is construed as a notice of insufficiency, the Administrative Law Judge agrees that Student has again failed to cure the deficiencies in his complaint.

APPLICABLE LAW

Motion to Amend Complaint

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)

The District offers two bases for objecting to Student's motion to amend. First, it states that Student is wasting judicial and other resources by filing amended complaints which do not cure the insufficiencies OAH found in Student's first two complaints. The District also objects to Student's proposed amendment because it argues that Student's second amended complaint is also insufficient. The District, however, offers no authority for the proposition that there is a specific number of times a party may amend a due process complaint. Nor does the District provide authority for its position that Student's motion to amend should be denied because the complaint is insufficient. Here, Student's motion to amend his complaint is timely and is granted. Student's amended complaint is therefore deemed filed as of the date of this order.

Sufficiency of a Due Process Complaint

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 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

¹ 20 U.S.C. § 1415(b) & (c).

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

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*

Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

Here, Student's second amended complaint adds very little to the facts contained in his prior two complaints, both of which were found deficient. Student continues to state that his issue is whether the District denied him a free appropriate public education (FAPE) March 9, 2011 individualized education program because it failed to offer and continue an appropriate academic tutoring supplemental education service relating to individual tutoring provided by CVS Learning in the area of math. However, Student still has not stated what, if any, his previous tutoring services were, how much tutoring he was previously receiving, how much tutoring he believes he needs in math, and the factual basis for his contention that he requires one-on-one tutoring in math in order to receive a FAPE. The changes that Student has made in each of his amended complaints are superficial and do not cure any of the deficiencies noted in the prior orders issued by OAH. Student's second amended complaint is therefore insufficient as pled.

The administrative law judge notes that Student is represented by both a licensed attorney and an educational advocate, and is not appearing in propria persona. Student shall be given another opportunity to amend his complaint. However, he is cautioned that if he chooses to file an amended complaint that fails to provide the background information and facts indicated above, his continued filing of insufficient complaints may be grounds for a subsequent finding that his filing of another insufficient complaint is frivolous and in bad faith.

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).⁷

(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).

⁷ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. Any dates presently calendared in this case are hereby vacated.

Dated: April 7, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings