

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LIBERTY UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2011031491

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 24, 2011, Student, through his parent, filed an amended request for due process hearing (complaint).¹ The complaint lists as respondent parties the Liberty Union High School District (Liberty Union), an entity identified as “Tobin World II,” and an entity identified as “Mount McKinley,” which Student states is a county school operated by the Contra Costa County Office of Education. Student also references an unidentified mental health entity in his list of respondents.

On July 6, 2011, Liberty Union 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

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).

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 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

In its NOI, Liberty Union contends that Student’s complaint is insufficient because it fails to clearly identify the allegations against it as to time, place, and subject matter of each claim. Liberty Union also states that the complaint is insufficient because Student was placed at a court school run by the county office of education. Student’s education was therefore not Liberty Union’s responsibility and Liberty Union therefore could not have denied Student a free appropriate public education (FAPE).

A determination of which local educational agency was responsible for a student’s education where that responsibility is disputed by the parties, can only be made following an examination of facts in the case. Liberty Union’s assertion that Student did not reside within its boundaries during the relevant time period implies factual disputes which are appropriate

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

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).

neither for an NOI nor for a motion to dismiss.⁸ Liberty Union's notice of insufficiency on that basis is therefore overruled.

However, Liberty Union is correct that Student's entire complaint is insufficient based upon the complaint's vague and conclusory allegations, the confusing wording of each allegation, and the complaint's failure to specify which of the named entities is responsible for each allegation, what time period is at issue, and what exactly the entity failed to do. It is entirely unclear and confusing which paragraphs relate to Liberty Union, which relate to the county office of education, which relate to "mental health," and which related to an entity called "Tobin World II."

For example, in the first full paragraph on page one of his complaint, Student alleges that his May 27, 2010 individualized education program (IEP) was not implemented. However, Student fails to state which portions of the IEP were not implemented and which of the named entities failed to implement it. He also fails to specify the time period during which the IEP was not implemented.

In his second paragraph, Student references that his IEP required a certain amount of small group instruction, mental health services, and counseling. Student then appears to state that he was supposed to be placed in a non-public school but was not placed there. However, it is unclear which of the named entities failed to provide the placement and when this occurred.

In paragraph three, Student states that "the District" placed him at Tobin World II. Student contends that he did not receive the proper placement and services while there. However, Student does not state which "District" he is referring to. He also fails to state which of the services were not provided and during what time period this failure occurred. In the same paragraph, Student contends that he was not provided with a triennial assessment since 2006. However, it is unclear again to which entity Student is referring.

The remainder of Student's complaint is equally unclear. In one paragraph Student references "the District" and in the following paragraph, again referring to his May 27, 2010 IEP, references "Tobin World" and "mental health office county education" (sic) as the entities that denied him a FAPE. In yet another paragraph Student references the "County of Contra Costa Education" as the entity which allegedly ignored his May 27, 2010 IEP, thereby denying him a FAPE. In a further paragraph, Student then asserts that it is "Mount

⁸ Even if an NOI or motion to dismiss was an appropriate vehicle to determine whether a named respondent was the entity responsible for providing Student with his education during the last two years, Liberty Union failed to provide any evidence in support of its assertion that the county office of education was responsible for Student's education during the contested time period.

McKinley Y.O.T.P the County School for Juveniles Youth Offender Program” that has provided fewer services to him than required by his IEP.

While Student contends that the “District” failed to provide him with a transition plan or transition IEP services for the last two years, in the next paragraph, Student references “District Tobin World” and “mental health” as being the parties responsible for his May 27, 2010 IEP and as the parties responsible for failing to provide him with required services. Student’s following paragraph then adds “Mount McKinley Contra Costa Office of Education” as an entity which failed to provide him with a FAPE.

In sum, Student’s complaint is confusing and vague. It is insufficient because it does not permit Liberty Union to be able to identify the specific allegations against it, the time frame during which the allegations occurred, or even whether it is the actual respondent or if it is actually another entity. Liberty Union should not have to guess whether Student’s allegations pertain to it or to one of the other named respondents. Therefore, Student’s complaint is insufficient in its entirety.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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).¹⁰
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.

9 Ed. Code, § 56505.

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

5. If Student's parent wishes the assistance of a mediator from the Office of Administrative Hearings to assist her in formulating her amended complaint, she should contact OAH in writing or by calling (916) 263-0880.

6. All dates previously set in this matter are vacated.

Dated: July 11, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings