

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH
SCHOOL DISTRICT, et al.

OAH CASE NO. 2011080031

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 28, 2011, Student, through his parent (herein jointly referred to as Student) filed a Due Process Hearing Request¹ (complaint) naming the Victor Valley Union High School District, the Desert Mountain SELPA, the San Bernardino County Superintendent's Office, and the San Bernardino County Education Support Services Division (herein collectively referred to as Respondents).

On August 12, 2011, the Respondents timely filed a joint 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 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, which his parent filed in pro per, is 39 pages long and is composed of a mix of allegations, facts, and legal analysis. The general theme of the complaint is based on allegations that some or all of the Respondents, at different times beginning with the 2009-2010 school year, have failed to offer Student a free appropriate public education, have failed to implement his individualized education programs, have committed procedural violations of the rights of Student and of his parent, and have denied Student a placement in the least restrictive environment. However, although those are the general premises of the complaint, it is nearly impossible to determine what the numerous alleged issues are, to which respondent each issue pertains, and to which time frame. There are multiple references to the same issues and what appear to be inadvertent mistakes in the year and/or month violations are alleged to have occurred.

For these reasons, Student’s complaint is insufficiently pled in that it fails to provide the respective respondents with a clear idea of what the issues are as they pertain to each respondent and what facts relate to each issue Student wishes to articulate.

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).

As noted above, Student's parent has filed the complaint in pro per. 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.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. If Student's parent would like assistance from OAH in re-formulating the issues she wishes to present in a complaint, she should contact OAH in writing or by telephone at (916) 263-0880.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code section 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. If Student's parent wishes the assistance of an OAH mediator in formulating the issues in an amended complaint, she should contact OAH either in writing or at the telephone number provided above.
6. All dates previously set in this matter are vacated.

Dated: August 15, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁸ Ed. Code, § 56505.

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