

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080062

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 1, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Folsom Cordova Unified School District (District).

On August 16, 2011, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. On August 17, 2011, OAH issued an order finding Student's complaint insufficiently pled in its entirety.

On August 17, 2011, Student filed a Response to the NOI, which was not served on the District until August 29, 2011. OAH treated Student's Response to the NOI as a Motion for Reconsideration. On August 31, 2011, OAH issued an order denying Student's request for reconsideration.

On September 7, 2011, Student filed an amended complaint, and on September 9, 2011, the District filed this NOI on Student's amended 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).

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).

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 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

It is noted that the District contends that Student failed to file her amended complaint within 14 days as ordered in the Determination of Sufficiency issued August 17, 2011. That order, however, was followed by a Motion for Reconsideration and order issued on August 31, 2011. While OAH denied reconsideration, the timeline for filing an amended complaint was tolled pending the order on Student’s motion. Hence, the 14 days for the filing of an amended complaint began on August 31, 2011, and therefore, Student’s amended complaint is timely filed. This however, cannot salvage Student’s amended complaint.

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).

Student's introductory paragraph in her amended complaint states that Student "will acknowledge that it used language that was not definitive to the initial motion of insufficiency and realized that it may have inadvertently misrepresented the action as directed by the court (OAH) to file an amended complaint. Student requests that OAH accept the previously captioned "Response to Motion of Insufficiency of Due Process complaint" as an amended motion of due process."

Student's amended complaint contains no proposed resolutions, and simply requests that OAH provide a Scheduling Order and Notice of Due Process Hearing and Mediation. 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 not met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

Student's amended complaint acknowledges that the IDEA requires specific information to be included in a due process complaint. (20 U.S.C § 1415 (b)(7)(A)(ii).) While Student spells out what information is required by federal law, she fails to include the specific relevant information regarding Student.

Further, the amended complaint does not include any discernable issues. Student has attached a copy of her initial August 1, 2011 complaint as Exhibit A. Even if assuming Student desires Exhibit A to be incorporated by reference to the amended complaint, the August 1, 2011 complaint was deemed insufficient. Realleging the same complaint does not cure its insufficiencies. As a result, Student's amended complaint is also insufficiently pled as it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

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).⁸

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.

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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

Dated: September 14, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings