

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011110642

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 16, 2011 Student filed a Request for Due Process Hearing and Mediation.¹ (complaint) naming Temecula Valley Unified School District (District).

On November 18, 2011, 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 requirements prevent vague and confusing complaints, and promote fairness by providing the

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).

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 alleges two claims.

Issue No. 1

In Issue No. 1, Student alleges District denied him a FAPE for the 2009-2010 school year by failing to properly identify, evaluate, and assess Student for eligibility in all suspected areas of disability and by failing to provide special education services until February 2010. This claim is sufficiently pled.

In a section entitled “Background Facts,” Student alleges Student’s history from 2005 until Student and his family move into the District in November 2008. Because of alleged over enrollment in Student’s school of residence, Parents enrolled Student at a private preschool. District held an IEP in March 2009, at which time District found Student eligible. Student’s Parents declined the offer of placement and services.

Student enrolled at his District school of residence for the 2009-2010 school year. At the October 20, 2009 IEP, District concluded Student was not eligible for special education

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).

services. Another IEP was held in February 2010, at which time Student was found eligible for special education under the primary category of speech or language impairment and a secondary category of specific learning disability. Student's parents accepted the offer. Student alleges another IEP was held in April 2010, without notice to, or attendance of Student's Parents.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of Issue 1. Namely, that Student should have been found eligible for special education services before the February 2010 IEP and the reason Student was not found eligible was because the District failed to properly identify, evaluate and assess Student. District's assertion that Issue 1 seeks relief for District conduct which precedes the two-year timeline is misplaced. Student does not state he intends to seek relief for any alleged action which preceded two years before the complaint's filing date. As to the complaint's Issue 1, Student's allegations identify the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in due process proceedings.

Issue No. 2

In Issue No. 2, Student alleges that District denied him a FAPE for the 2010-2011 school year by failing to perform eight listed sub-issues, which are considered individually, as follows:

- (a) to properly and timely evaluate Student in all areas of suspected disability.

As to this sub-issue (a), the complaint is insufficient. The complaint does not allege any time delay in assessments or evaluations and does not identify any assessment or evaluation as improper or inappropriate. Absent such allegations, the complaint is insufficiently pled and fails to provide District with the required notice of the problem and related facts, as to Issue (a).

- (b) to properly consider assessment data related to Student's disabilities.

Student's complaint fails to assert what, if any, assessment data which District did not properly consider. Absent such allegations, the complaint is insufficiently pled and fails to provide District with the required notice of the problem and related facts, as to Issue 2(b).

- (c) to develop appropriate goals for Student consistent with his disabilities.

Student's complaint fails to assert what goals District failed to appropriately develop. The complaint does not allege any facts relevant to goals other than the general assertion that Parents expressed dissatisfaction. Absent such allegations, the complaint is insufficiently pled and fails to provide District with the required notice of the problem and related facts, as to Issue 2(c).

- (d) to provide the level of services agreed upon.

Student's complaint fails to assert that Student's Parents agreed to any services, or what those services might have been, for the 2010-2011 school year. Therefore, there are no facts to support this assertion. The complaint is insufficiently pled and fails to provide District with the required notice of the problem and related facts, as to Issue 2(d).

- (e) to have appropriately qualified and trained staff to provide the services needed by Student to obtain a FAPE.

Student's complaint fails to assert or identify services for which District did not have qualified and trained staff. Absent such allegations, the complaint is insufficiently pled and fails to provide District with the required notice of the problem and related facts, as to Issue 2(e).

- (f) to provide all appropriate notices to parents.

Student's complaint asserts that the District held an IEP meeting in April 2010 without providing notice to Student's Parents, holding the meeting without Parents in attendance. However, the complaint further states there was an August 2010 assessment plan with an October 2011 IEP. There is no assertion that the April 2010 IEP meeting had anything to do with the 2010-2011 school year and there are no further factual allegations regarding District's failure to give appropriate notice. Absent such allegations, the complaint is insufficiently pled and fails to provide District with the required notice of the problem and related facts, as to Issue 2(f).

- (g) to place and fund Student at Newbridge.

The complaint sets forth District's October 2010 and January 2011 IEP offers, stating that Parents declined and notified District of their intent of placing Student in a private/nonpublic school, for which they would seek reimbursement. The complaint contains no allegations relative to the 2011-2012 school year or later. However, the allegations do adequately set forth the fundamental disagreement regarding placement. Therefore, when limited to the 2010-2011 school year, Student's allegations sufficiently identify Issue 2(g) and adequate related facts about the problem to permit District to respond to the complaint and participate in mediation.

- (h) to reimburse parents for the non-public school placement.

This issue is related to Issue 2(g) which alleges that Newbridge was the proper placement. Here, since District did not place Student at Newbridge, Student alleges that District should have reimbursed Parents for their unilateral private/NPS placement of Student at Newbridge. This issue is sufficiently pled but is limited to the 2010-2011 school year. The complaint contains no allegations relative to the 2011-2012 school year or later.

Therefore, when limited to the 2010-2011 school year, Student's allegations sufficiently identify Issue 2(h) and adequate related facts about the problem to permit District to respond to the complaint and participate in mediation.

Proposed Resolutions

District asserts that Student's proposed resolutions for Issue 2 do not meet the statutory standard. 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's proposed resolution for Issue 2 is for the District to place and fund Student at the private school Newbridge, including transportation costs. Additionally, Student requests reimbursement for assessments and placement at Newbridge since January 2011. Finally, Student asks for compensatory education. District contends that the resolution seeks reimbursement and payment of costs for the 2011-2012 school year, or beyond, which is not put at issue in the complaint.

However, as noted above, the issues are limited in time and, as such, the resolutions are similarly limited. Unlike issues, the statute only requires a proposed resolution to be related to the problem; there is no comparable requirement that the resolution be sufficiently pled. Student's proposed resolutions for Issue 2 are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issue 1 of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 2 (g) and (h) of Student's complaint are limited to the 2010-2011 school year and, as so limited, are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 2(a), (b), (c), (d), (e) and (f) of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

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

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue 1 and on Issues 2 (g) and 2(h) (as to the 2010-2011 school year, only), in Student's complaint.

Dated: November 21, 2011

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings