

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT, LOS ANGELES
COUNTY OFFICE OF EDUCATION AND
BUENA VISTA PRINCIPAL
ADMINISTRATIVE UNIT.

OAH CASE NO. 2011120363

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 12, 2011, Parent, on behalf of Student, filed a Request for Due Process Hearing (complaint)¹ with the Office of Administrative Hearings (OAH), naming the Norwalk-La Mirada Unified School District (District). On February 15, 2012, Student filed an amended complaint, which added as parties the Los Angeles County Office of Education (LACOE) and Buena Vista Principal Administrative Unit (Buena Vista). On February 27, 2012, LACOE 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 Individuals with Disabilities Education Act 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 amended complaint only included allegations against LACOE and Buena Vista as it is intended to add allegations against the new parties that were not included in the original complaint, which just contained allegations against the District. The amended complaint raises six issues for hearing by making reference to attachments included with Student’s January 26, 2012 Prehearing Conference (PHC) statement. However, Student needs to include all allegations in an integrated document, and not refer to documents attached to other pleadings. Additionally, because LACOE and Buena Vista were not parties to the action when Student submitted the PHC statement, it is not known if Student served a copy of those documents on LACOE and Buena Vista. If Student files a second amended complaint, Student needs to include in one document all allegations Student alleges against all named parties and not to attach documents to the second 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).

Accordingly, Student fails to allege sufficient facts and thus insufficiently pled as to LACOE and Buena Vista.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parent requests the assistance of a mediator, he should contact OAH immediately in writing.

ORDER

1. Student's amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to LACOE and Buena Vista.
2. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸
3. The second 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 second amended complaint, the complaint will be dismissed as to LACOE and Buena Vista.
5. All dates as to LACOE and Buena Vista are vacated, and this matter shall proceed as calendared as to only the District.

Dated: March 2, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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