

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GOLDEN VALLEY CHARTER SCHOOL
AND MESA UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2012010155

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 9, 2012, Parent, on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Golden Valley Charter School (Charter) and the Mesa Union School District (District) as respondents. On January 24, 2012, 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 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 complaint alleges six issues, identified in the complaint as “problems,” and identifies proposed resolutions. The complaint in its entirety is insufficiently pled as discussed in detail below. Student identifies several areas of general concern, but fails to sufficiently allege a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the Student, or the provision of a FAPE.

Student’s Issues One through Three set forth alleged problems with requisite participants at Student’s individualized education program (IEP) team meeting, directions with respect to signing the IEP document and individuals who may or may not contact Parent and individuals working with Student. While these may be genuine problems that Parent has with Charter and District, the complaint fails to set forth how these problems have affected Student’s special education placement and services, or Student’s ability to receive a FAPE. Accordingly, Student’s Issues One through Three are legally insufficient.

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).

In Issue Four, Student contends that Charter and District failed to provide Student with supports to “improve and identify reasons” for Student’s difficulty with test taking. While Student identifies a problem, Student does not specify how Charter and District failed to appropriately address Student’s test taking needs. Issue Four does not provide the date of the IEP at issue, nor the components in dispute. For example, Student should provide facts setting forth his disability, the IEP(s) in question, whether District and Charter have failed to identify Student’s need in test taking, or whether they refuse to provide or implement accommodations and supports, and how this has impacted Student’s ability to receive a FAPE. Student’s Issue Four is insufficiently pled to put Charter and District on notice as to the basis of Student’s claim, or to meaningfully respond, prepare for hearing, and participate in a resolution session and mediation.

In Issue Five, Student asserts that his multiple diagnoses of autism, brain injury, hearing impairment, pervasive developmental disorder⁸, and attention deficit hyperactivity disorder⁹ “should qualify Student for special education” and that these diagnoses cause Student to struggle in all areas of language, impacting Student’s entire curriculum. Issue Five identifies areas of disability that Student alleges are impacting his education, but Student fails to provide essential facts that would provide Charter and District with adequate notice of any alleged violation. Student does not provide information as to which elements of his IEP are insufficient. It is unclear if Student is disputing his current category of eligibility. Issue Five is further unclear because it seems to allege that Student is not qualified for special education, whereas, the remainder of the complaint implies that Student is currently eligible for special education. While Student proposes as a resolution multiple program modifications, he fails to identify how District’s program denies Student a FAPE. Student’s Issue Five is insufficiently pled to put Charter and District on notice as to the basis of Student’s claim, or to meaningfully respond, prepare for hearing, and participate in a resolution session and mediation.

Issue Six contends that Charter and District require Student to use state approved curricula for Student’s basic courses in order for him to obtain a diploma and that “most” of these courses cause the Student difficulty. Student alleges that Charter and District failed to address Student’s learning needs or “style” and failed to provide proper support. The complaint fails to provide specific facts describing the nature of Student’s difficulties and does not identify how Charter and District’s programs failed to allow Student to access the required courses for a diploma. Student does not specify what supports are lacking. Issue Six is legally insufficient as it fails to provide factual details that would provide Charter and District with required notice. Student’s Issue Six is insufficiently pled to alert Charter and District of the nature of Student’s claim, or to allow them to meaningfully respond, to prepare for hearing, and to participate in a resolution session and mediation.

⁸ Student’s complaint lists “PDD,” an acronym for pervasive development disorder.

⁹ Student’s complaint lists “ADHD,” an acronym for attention deficit hyperactivity disorder.

All of Student's six issues are legally insufficient as pled. 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.¹⁰ 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 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).¹¹
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. All dates previously set in this matter are vacated.

Dated: January 30, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

¹⁰ Ed. Code, § 56505.

¹¹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.