

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRUITVALE SCHOOL DISTRICT.

OAH CASE NO. 2012030900

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 22, 2012, Student filed a Request for Due Process Hearing (complaint), naming Fruitvale School District (District), Kern County Superintendent of Schools (Superintendent) and Kern County Consortium SELPA (SELPA) as Respondents. Student's complaint alleged five issues for hearing.

On March 29, 2012, the District, Superintendent and SELPA (collectively Respondents) filed a Motion to Dismiss Due to Lack of Jurisdiction on the grounds that Student's complaint contained only allegations outside Education Code section 56501(a) and beyond the jurisdiction of the Office of Administrative Hearings (OAH). OAH received no response to the Motion to Dismiss from Student. On April 13, 2012, OAH issued an order that dismissed Issues One, Two, Three and Five, and directed that the matter proceed to hearing only on Issue Four.

On April 24, 2012, Student filed a motion to amend the complaint. On April 25, 2012, OAH granted Student's motion to amend and deemed the amendment filed on that date (amended complaint).

On April 27, 2012, Student filed another motion to amend his complaint to include issues Student identified as "complaint six" and "complaint seven." On May 2, 2012, OAH granted Student's second motion to amend his complaint, ordered Student to promptly serve a copy of his second amended complaint on Valley Oakes Charter School, Our Lady of Guadalupe, the Fruitvale School District Board Members, and Superintendent Board Members and file a proof of service with OAH.¹

On May 9, 2012, Parent requested mediator assistance. On May 10, 2012, OAH assigned a mediator to assist Parent.

¹ No proof of service has been filed to date.

On May 11, 2012, Respondents filed a Notice of Insufficiency (NOI).²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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.⁴ 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.⁵

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with

² On March 22, 2012, Parent filed a Request for Due Process Hearing against Respondents on behalf of Student’s brother, case number 2012030921. Parent and Respondents file the same documents in each case, although not always on the same day. Respondent’s NOI in case number 2012030921 was filed May 10, 2012 and assigned to a different ALJ. A Determination of Sufficiency of Due Process Complaint in case number 2012030921 was issued May 11, 2012.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ 20 U.S.C. §1415(b)(7)(A)(ii)(IV).

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

Disabilities Education Act and the relative informality of the due process hearings it authorizes.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

DISCUSSION

The OAH Order dated April 27, 2012, dismissed Student's Issues One, Two, Three and Five. Issue Four concerning speech and language services remained at issue. Student's amended complaint and second amended complaint contained allegations against additional defendants and contained a sixth and seventh claim (Issues Six and Seven). Read liberally and together, the complaint and the amended complaints contain allegations regarding the termination of speech and language services and revocation of Student's inter-district transfer. For the reasons set forth below, the only issue that was sufficiently pled was Issue Four as against the SELPA. However, even though Issue Four was sufficiently pled against the SELPA, Student's proposed resolution is insufficient.

Issue Four contains allegations against the SELPA as to termination of speech and language services, thus the SELPA has adequate notice of Student's claim SELPA failed to provide Student with speech and language services. However, Issue Four does not make any allegations against the District or Superintendent, and therefore does not provide them with adequate notice as to any alleged violations. Accordingly, Student's Issue Four is sufficient as to the SELPA. However, Student failed to allege sufficient facts against the District and Superintendent, and therefore Issue Four is insufficient as to the District and Superintendent.

Student's proposed resolution as to Issue Four is insufficient because Student does not clearly state what relief he seeks if he prevails in his claim the SELPA failed to provide speech and language services. Student alleges only that the SELPA "provide services ASAP" and "make a safe environment for all children." This proposed resolution does not meet the statutory requirement to state a resolution to the extent known and available to him at the time of the filing of the amended complaint.

⁸ *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.].

⁹ 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).

Issues Six and Seven identify various categories of individuals in their official capacities with the District, SELPA and Superintendent, and allege these individuals denied Student a FAPE. Issues Six and Seven do not allege that the District, SELPA and/or Superintendent denied Student a FAPE. Accordingly, Student failed to allege sufficient facts in Issues Six and Seven to provide adequate notice to the District, SELPA and Superintendent so that Respondents can prepare for a hearing and participate in resolution sessions and mediation, if appropriate.

The day before this NOI was filed, Student requested and was assigned mediator assistance,¹⁰ presumably to file a third amended complaint. If Student amends his complaint he needs to include all allegations against the local education agencies, including any new allegations, in one document.

ORDER

1. Student's amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file a third amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹¹
3. The third 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 third amended complaint, the second amended complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: May 15, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings

¹⁰ Ed. Code, § 56505.

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