

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRUITVALE SCHOOL DISTRICT,
KERN COUNTY SUPERINTENDENT OF
SCHOOLS, AND KERN COUNTY
CONSORTIUM SELPA.

OAH CASE NO. 2012030921

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 filed a Motion to Dismiss Due to Lack of Jurisdiction, alleging that Student's complaint contains allegations that deal only with issues outside Education Code section 56501(a) and the Office of Administrative Hearings (OAH) does not have jurisdiction over these issues. 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 would proceed to hearing only on Issue Four.

On April 24, 2012, Student filed a motion to amend the complaint. The District, Superintendent and SELPA opposed the motion at the April 25, 2012 Prehearing Conference. On April 27, 2012, OAH granted Student's motion to amend, and the same day Student filed an amended complaint that solely added a new issue, Issue Six.

On May 11, 2012, the District, Superintendent and SELPA filed a Notice of Insufficiency (NOI) as to 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.¹ 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.² 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.³

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

¹ 20 U.S.C. § 1415(b) & (c).

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

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

DISCUSSION

Because the April 27, 2012, order that dismissed Student's Issues One, Two, Three and Five, the only issues considered in this NOI are Issues Four and Six. However, Student's amended complaint only included Issue Six.⁷ Read together, the amended complaint contains allegations regarding the termination of speech and language services and revocation of Student's inter-district transfer.

Issue Four only consists of contentions against the SELPA as to termination of speech and language services, and thus provides the SELPA with adequate notice as to the purported failure 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 alleges sufficient facts supporting this claim to put the SELPA on notice, and therefore this claim is sufficient as to the SELPA. However, Student fails to allege sufficient facts against the District and Superintendent, and therefore Issue Four is insufficient as to the District and Superintendent.

Issue Six is an extremely confusing litany of charges against various individuals in their official capacities with the District, SELPA and Superintendent. Issue Six does not contain any allegations specifically that the District, SELPA and/or Superintendent denied Student a FAPE. Accordingly, Student failed to allege sufficient facts in Issue Six to the District, SELPA and Superintendent as to how they may have denied Student a FAPE.

Student's proposed resolution as to Issue Four is insufficient as Student does not clearly state what relief he is seeking if Student prevails in demonstrating that the SELPA improperly ceased providing speech and language services. 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).) Therefore, the proposed resolution stated in Student's amended complaint is not well-defined, and does not meet the statutorily required standard of stating a resolution to the extent known and available to him at the time of the filing of the amended complaint.

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.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

⁷ If Student amends his complaint he needs to include all allegations against the local education agencies, including any new allegations, in one document.

⁸ Ed. Code, § 56505.

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 second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
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 amended complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: May 11, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.