

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT AND COVINA-VALLEY
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012031078

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT;
ORDER DENYING BALDWIN PARK
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS SECOND
AMENDED COMPLAINT

On March 27, 2012, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Baldwin Park Unified School District (BPUSD) and Covina-Valley Unified School District (CVUSD) as respondents. On April 9, 2012, BPUSD filed a Notice of Insufficiency (NOI) of Due Process Complaint and Motion to Dismiss. On April 11, 2012, the Office of Administrative Hearings (OAH) issued an Order of Determination of Sufficiency of Due Process Complaint and Granting Motion to Dismiss Issue Two on grounds that OAH lacked jurisdiction to hear the claims alleged...

On April 16, 2012, Student filed an amended complaint containing two issues. Issue One alleges that BPUSD and CVUSD have failed to provide Student a FAPE in the May 12, 2011 Individualized Education Program (IEP), and subsequent amendments dated July 15, 2011, and August 4, 2011, as the IEP goals and placement failed to meet Student's unique needs as a deaf and hard of hearing (DHH) student, whose primary language is American Sign Language (ASL). Issue Two realleges the original Issue Two of the complaint that the respondents are violating two federal statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA) (29 U.S.C. § 701 et seq.).

On April 23, 2012, CVUSD filed a NOI as to Issue One and a motion to dismiss Issues One and Two of Student's amended complaint. On April 25, 2012, OAH issued an order determining that Issue One of the amended complaint was insufficient as to CVUSD because there were no allegations that CVUSD had any role in the IEP decision-making process. The order also dismissed Issue Two on grounds that OAH lacked jurisdiction to hear the claims alleged.

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).

On April 27, 2012, Student filed a second amended complaint. Issue One alleges that BPUSD and CVUSD have failed to provide Student a FAPE in the May 12, 2011 IEP, and subsequent amendments dated July 15, 2011, and August 4, 2011. Issue Two realleges the original Issue Two of the complaint that the respondents are violating two federal statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA) (29 U.S.C. § 701 et seq.).

On April 30, 2012, Student filed with OAH a notice to partially withdraw Issue Two only as to CVUSD.

On April 30, 2012, BPUSD filed a Motion to Deny Student's Notice of Partial Withdrawal of Issue Two, Motion to Strike Issue Two, Notice of Insufficiency, and Motion to Dismiss the Second Amended Complaint. The Student has not filed a responsive pleading to BPUSD's pleading. BPUSD's motion to deny the notice of partial withdrawal and to strike Issue Two was deemed a motion to dismiss Issue Two. On May 8, 2012, OAH granted BPUSD's motion and dismissed Issue Two. On May 8, 2012, OAH determined that the second amended complaint was sufficient as to BPUSD and denied BPUSD's motion to dismiss the second amended complaint.

On May 8, 2012, CVUSD filed an NOI and motion to dismiss issue and motion to dismiss the second amended 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

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

In his second amended complaint, Student alleges that he is a seventh grader eligible for special education as hearing impaired. Student is a resident of BPUSD but attends a DHH SDC at CVUSD, because BPUSD can not meet Student’s unique needs. Student has problems communicating with peers and school staff as a majority of staff and students is not conversant in ASL. Student avers that CVUSD “has agreed to be responsible for [Student’s] education” in that CVUSD conducts Student’s IEP meetings; provides Student’s placement and services; and makes decisions involving Student’s education at the IEP meetings since no BPUSD personnel attend the IEP meetings. In Issue One (labeled as Problem One), Student alleges: (1) the goals adopted by the IEP team at the May 12, 2011 IEP meeting are not appropriate in the areas of language, reading, reading comprehension, writing, vocabulary, use of oral and written language, and articulation because they are not drafted to meet Student’s unique needs arising from his hearing loss and need to be rewritten to account for Student’s primary mode of communication, ASL; (2) the placement offered by the IEP team at the May 12, 2011, July 15, 2011 and August 4, 2011 IEP meetings is not appropriate “because it does not provide [Student] with direct access to instruction in all components of his education in his primary mode of communication: ALS.” (Second Amended Complaint,

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).

p. 3: 19-22.); and (3) that the IEP team's failure to refer Student to the California School for the Deaf denied him a free appropriate public education because the team failed to consider Student's special communication needs.

The facts alleged in Student's second amended complaint are sufficient to put the CVUSD on notice of the issues forming the basis of the complaint. Student's second amended complaint identifies the issues and adequate related facts about the problem to permit CVUSD to respond to the complaint and participate in a resolution session and mediation. Therefore, Issue One of the second amended complaint is sufficient. Since Issue One of the second amended complaint is sufficient, CVUSD's motion to dismiss is moot.

As to CVUSD's motion to dismiss Issue Two, the matter is moot since Student has previously withdrawn the issue as to CVUSD.

ORDER

1. Issue One of the second amended complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Covina-Valley Unified School District's motions to dismiss the second amended complaint and to dismiss Issue two are denied.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 08, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings