

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SIMI VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040802

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 19, 2012 Student's father filed a Due Process Hearing Request¹ (complaint) on behalf of Student (Father and Student are referred to here jointly as "Student") naming the Simi Valley Unified School District (District).

On May 4, 2012, the 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 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

Allegations of the Complaint

Student’s complaint alleges five claims in the complaint, which are all insufficiently pled. Issue one alleges that an “IEP was held without invitation notice.” This issue does not give the date of the individualized education program (IEP) meeting to which Student refers or who did not receive notice of the meeting. Assuming Student’s father (Father) means to say that he was not given notice of the meeting, the issue also does not state whether the alleged lack of notice meant that Father did not attend the meeting.

Issue two alleges “IEP not signed by proper parties, in correct dates on IEP.” Again, Student does not state to which IEP this allegation refers. She also does not state who was supposed to have signed the IEP, who actually signed the IEP, and why those who did sign should not have done so.

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 three, Student alleges “IEP changed and copied, no signature requested.” Again, Student does not identify which IEP is at issue, what the alleged changes were, whose signature was supposed to have been requested, and when these actions occurred.

In issue four, Student alleges “Despite court order provided Father not notified of any of these procedures.” This issue fails to identify to which court order Student refers, to whom the order was provided, when it was provided, what the order states, and what the procedures are about which Father did not receive notice.

Finally, in issue five, Student alleges that “Father had to call and email constantly to attempt to get this resolved.” Student does not allege when these actions occurred, or what Father was trying to resolve. Importantly, Student does not allege how the facts of this allegation violated her rights or Father’s rights.

Proposed Remedies

The District also alleges that many of Student’s proposed remedies are ill-defined, or beyond the jurisdiction of OAH. District is correct. However, a complaint is only 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).) For purposes of an NOI, there is no pleading requirement that the remedies be totally clear or within OAH jurisdiction. Student’s proposed resolutions, while not models of clarity, have met the statutorily required standard of stating a resolution to the extent known and available to her at the time. Should Student file an amended complaint, the District may move to strike the defenses or wait to address the issues at the prehearing conference in the matter.

Mediator Assistance for Non-Represented Parents

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.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. Father may either write a letter to OAH in Sacramento, or call OAH at (619) 263-0880 to request this assistance.

ORDER

1. Student’s complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

⁸ Ed. Code, § 56505.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹

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.

6. If Father wishes the assistance of an OAH mediator in writing the amended complaint, he should contact OAH as discussed above.

Dated: May 10, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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