

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012050894

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 22, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing. On June 8, 2012, Student filed an amended Request for Due Process Hearing (complaint).¹ Student's complaint named the Sweetwater Union High School District (SUHSD), the Coronado Unified School District (CUSD), and Ronald Lopez as respondents.² On June 22, 2012, the CUSD filed a motion to dismiss, or in the alternative a Notice of Insufficiency (NOI) for this matter. Also on June 22, 2012, the SUHSD filed a NOI as to Student's complaint.

On June 25, 2012, OAH determined that the complaint had been insufficiently pled and granted the respondents' NOI's. OAH also determined that CUSD's motion to dismiss was moot because Student's complaint had been insufficiently pled and because OAH had granted respondents' NOI's. OAH ordered that Student had 14 days to file an amended complaint or this matter would be dismissed.

On June 25, 2012, Student filed a second amended complaint (SAC). Student's second amended complaint was not addressed by OAH's June 25, 2012 Order which found only that Student's complaint was insufficient. The SAC contains two claims. Neither the CUSD nor the SUHSD filed an opposition to Student's second amended complaint. On July 2, 2012, OAH issued an order granting leave to file the SAC.

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 Student's second amended complaint names only the SUHSD and CUSD as respondents.

July 10, 2012, CUSD filed a motion to dismiss on grounds that OAH lacks jurisdiction to hear Student's claims against it. In the alternative, CUSD also filed a NOI. OAH has not received a response from Student. On July 11, 2012, OAH issued an order granting CUSD's motion and dismissed CUSD as a party.

On July 10, 2012, SUHSD filed a Notice of Insufficiency as to the SAC.

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

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."⁶ 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.⁷

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

⁷ *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.].

Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student's SAC alleges two claims, which are insufficiently pled as discussed below. Claim One alleges that SUHSD violated the Individuals with Disabilities Education Improvement Act (IDEIA). Claim Two alleges that SUHSD violated the California statutes which mirror the IDEIA. Claim Two contains no factual allegations and incorporates the allegations of Claim One.

Student's first claim is contained within paragraphs 6 through 90 on pages 2 through 11 which conflate a factual background with what appears to be various and intermittent allegations against the respondents. The SAC is confusing, and it is difficult to ascertain what specifically the allegations against SUHSD are. The factual allegations do not permit the reader to know the time the allegations arose, or how a specific allegation denied Student a free and appropriate public education (FAPE). The claim is too general and overbroad, and fails to provide the respondents a specific understanding of the allegation.

It would be helpful for Student to identify specific allegations and to delineate such allegations in a concise manner which is separate from the factual history. It would be helpful to the reader to determine what is being alleged if Student listed as individual claims each specific claim as to what portion of the IDEIA was being alleged and the facts supporting that particular claim, which Individualized Education Program (IEP) and meeting was involved, and what resolution is being sought. For an example, Student alleges that the January 2012 transition plan was "deficient and inappropriate." It is necessary for Student to recite what the transition plan provided and why it was deficient and inappropriate, as well as stating what resolution is being sought.

Student's SAC is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

With respect to Student's two issues, Student fails to (1) provide a description of the nature of the problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child; and (2) facts relating to the problem.

Therefore, Student has failed to state sufficient facts supporting this claim, and the complaint is insufficient.

⁸ 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).

Resolutions contained in the SAC are not sufficient

The proposed resolutions (which Student entitles as Prayer for Relief) contained in the SAC are not sufficient. Student seeks a prayer for money damages including punitive damages. OAH does not have jurisdiction to award money damages including punitive damages. Counsel is directed to research the appropriate remedies which legally may be sought in a due process hearing.

ORDER

1. Student's second 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).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 third amended complaint, the complaint will be dismissed. If the third amended complaint is not sufficient, the entire action will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: July 11, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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