

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALAVERAS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060392

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 7, 2012 Parent on behalf of Student filed a Due Process Hearing Request¹ (complaint) naming the Calaveras Unified School District (District).

On June 13, 2012, the Office of Administrative Hearings (OAH) issued a scheduling order with dual expedited and non-expedited dates for mediation, prehearing conference, and hearing.

On June 15, 2012, District filed a Notice of Insufficiency (NOI) as to Student's complaint.² District also filed a separate Motion to Unexpedite this case. The Motion to Unexpedite will be ruled on separately.

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

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 District's NOI asserts that Student incorrectly named specific individuals as parties in his complaint instead of naming the school district. District's assertion that individual respondents are not proper party to the action would be appropriate to raise in a separate Motion to Dismiss and, therefore, will not be addressed in this order.

³ 20 U.S.C. § 1415(b) & (c).

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

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).) A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. §

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.].

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).

300.532(a)(2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).) Furthermore, the rights afforded to a party to challenge the sufficiency of a complaint, under title 20 United States Code sections 1415(b) and 1415(c), do not extend to complaints brought pursuant to title 20 United States Code sections 1415(k)(3) and 1415(k)(4).

DISCUSSION

Student filed his complaint using the OAH Request for Mediation and Due Process Hearing form. Student alleges six claims in the complaint. The handwritten portions of the complaint are difficult to read and some sections are illegible.

Issues 1 and 2 relate to Student’s suspensions from school from April 26 to May 2, 2012, and May 21 to May 24, 2012, and are the subject of the expedited portion of this matter. As discussed above, allegations and claims subject to an expedited hearing are not subject to an NOI challenge. Accordingly, Issues 1 and 2 will not be addressed in this order and the expedited portion of the hearing shall proceed as scheduled. The remaining four claims are insufficiently pled as discussed below in that they fail to provide District with the required notice of a description of the problem and the facts relating to the problem.

With respect to Issue 3, Student alleges that school administrators failed to protect Student from bullying, intimidation, and sexual harassment. However, Student does not include any facts to indicate when the incident[s] occurred, who was involved, and how this resulted in a loss of educational benefit or a denial of FAPE to Student.

With regard to Issue 4, Student alleges that school educators are not trained to handle children with autism, or with emotional and social disabilities. Again, Student does not include any facts to identify a specific incident or educators, or what training they lack, and how this resulted in a loss of educational benefit or a denial of FAPE to Student.

With regard to Issue 5, Student alleges there was a failure to discuss actions prior to the imposition of punishment. Student does not include any facts to identify a specific incident[s] or the school staff who were involved, if any, or how this resulted in a loss of educational benefit or a denial of FAPE to Student.

With regard to Issue 6, Student alleges he is not benefitting in his current placement and his social and academic needs are not being met. However, Student does not include any

facts to identify what specific needs are not being addressed and how this resulted in a loss of educational benefit or denial of FAPE to Student.

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.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues 1 and 2 of Student's complaint are not subject to an NOI and shall proceed as pled under the expedited schedule in this matter.
2. Student's complaint with regard to Issues 3, 4, 5, and 6 are insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰
4. 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.
5. If Student fails to file a timely amended complaint, the complaint will be dismissed as to Issues 3, 4, 5, and 6.
6. All dates previously set in the non-expedited portion of this matter are vacated. The hearing dates in the expedited portion of Student's complaint with regard to Issues 1 and 2 will proceed as scheduled.

Dated: June 20, 2012

/s/
TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings

⁹ Ed. Code, § 56505.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.