

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012080271

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT; AND ORDER
DENYING MOTION TO DISMISS

On August 9, 2012, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH), naming the Lincoln Unified School District (District). On August 16, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. On August 20, 2012, OAH granted the District's NOI and gave Student 14 days to file an amended complaint, or OAH would dismiss Student's complaint against the District.

On September 6, 2012, Student filed an amended complaint against the District.² On September 6, 2012, the District filed an NOI as to the amended complaint, and motion to dismiss because Student untimely filed the amended complaint, as Student's complaint was to be served by September 4, 2012.³

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ 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) and Education Code section 56502, subdivision (c)(1).

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 concurrently filed a motion for stay put, which will be ruled upon in a separate order.

³ The 14th day fell on a holiday, September 3, 2012, so Student's amended complaint was due on the next business day.

⁴ 20 U.S.C. § 1415(b) & (c); Ed. Code 56502, subd. § (d)(1).

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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

DISCUSSION

Motion to Dismiss

The District requests that OAH dismiss Student’s case because Student untimely filed the amended complaint. Student’s amended complaint does not provide an explanation why Student did not file the amended complaint when ordered, which was September 4, 2012. However, a possible explanation was the series of events on September 4, 2012, when, as alleged, the District expelled Student without cause. Therefore, the District’s motion to dismiss is denied.

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

Sufficiency of Amended Complaint

Student's amended complaint contains 14 issues for hearing. The issues involve numerous procedural violations during individualized education program (IEP) team meetings and his expulsion from the District, along with a brief factual narrative. However, Student's amended complaint is not sufficiently clear and did not address the reasons why the complaint was found insufficient in the August 20, 2012 order because Student merely rephrased and rearranged the issues from the original complaint. The amended complaint fails to coherently set forth whether the purported violations involved a violation of the IDEA (20 U.S.C. § 1400 et. seq.), the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11301, et seq.) (McKinney-Vento Act), over which OAH does not have jurisdiction to hear disputes, or inter-personal disputes between Parent and District personnel, which requires the District to guess which facts relate to Student's contentions that the District denied Student a FAPE. (*Student v. Valley Center Union School District* (February 18, 2009) Cal.Ofc.Admin.Hrngs. Case No. 2009010785.) Accordingly, Student failed to allege sufficient facts as to issues in the amended complaint.

Therefore, the amended complaint is insufficiently pled as it fails to include adequate allegations to put the District on notice as to the basis of Student's claims and proposed resolutions to permit the District to respond to the amended complaint and participate in a resolution session and mediation.

ORDER

1. The District's motion to dismiss is denied.
2. Student's amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰
4. 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.
5. If Student fails to file a timely second amended complaint, the complaint will be dismissed.

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

6. All dates previously set in this matter are vacated.

Dated: September 7, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings