

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT, AND TWIN RIVERS UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012090646

ORDER GRANTING NOTICE OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AS TO TWIN RIVERS
AND DEEMING MOTION TO
DISMISS MOOT

On September 20, 2012, Parent on behalf of Student filed a Due Process Hearing Request¹ (complaint) naming as respondents San Juan Unified School District (San Juan) and Twin Rivers Unified School District (Twin Rivers). On September 27, 2012, Twin Rivers timely filed a Notice of Insufficiency (NOI) and a Motion to Dismiss as to Student's complaint. For the reasons discussed below, the NOI is granted only as to Twin Rivers, and Twin Rivers' motion to dismiss is deemed moot.

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

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).

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.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

If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3) (2006). The removal of a special education student from his placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a)(i).) A student receiving special education services may be suspended or expelled from school as provided by federal law. Suspension or expulsion of special education students is governed by title 20 United States Code section 1415(k); title 34 Code of Federal Regulations, part 300.350, et seq., and Education Code, § 48915.5. When a school district changes the placement of a student receiving special education services for specific conduct in violation of a student code of conduct, the student is entitled to certain procedural protections. A parent who disagrees with any decision regarding a manifestation determination under Title 20 United States Code section 1415(k)(1)(E) may request a hearing. (20 U.S.C. § 1415(k)(3)(A).) In appropriate circumstances, the ALJ hearing

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).

the dispute may order a change in placement of the student, and may return the student to the placement from which he was removed. (20 U.S.C. §1415(k)(3)(B)(ii).)

DISCUSSION

Here, Student's complaint alleges that Rio Linda High School initiated expulsion proceedings against Student in early September, 2012, and has not allowed him to return to school. Student's complaint attaches a letter from Twin Rivers setting a date for an expulsion hearing on September 26, 2012, a notice of an IEP meeting, a copy of Student's individualized education program (IEP) dated January 23, 2012, and several suspension notices from Twin Rivers. The complaint also alleges that "the Districts" failed to provide Student with a positive behavior intervention plan "in his IEP," and that none of the administrators, educators or special education case managers supplied a "road map or plan" that considered Student's disability in the context of his education plan. Student also alleges that the respondents failed to provide Student with an environment in which learning can occur, in light of an unspecified "diagnosed disorder" that impacts Student's ability to learn.

Student seeks an "expeditious" due process hearing to address violations of Student's rights under the Individuals with Disabilities Education Act. However, Student's complaint is ambiguous as to whether Student is seeking an expedited hearing challenging a manifestation hearing by Twin Rivers based upon his suspensions immediately prior to filing the complaint. If in fact he is, then his claim for an expedited hearing, if pleaded properly, must be severed from the non-expedited issues, and two hearing dates must be set, one for an expedited hearing on the expedited issues, and one for the non-expedited issues.

Student does not allege any facts that establish that a manifestation hearing ever took place, whether or not Student is challenging a manifestation hearing that would entitle Student to an expedited hearing, whether he was placed in an alternative educational setting, or whether Twin Rivers provided or failed to provide educational instruction to Student during the alleged suspension/expulsion, etc. Without more facts, OAH cannot determine whether or not this complaint should be heard on an expedited basis.

Additionally, a complaint is 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).) Here, Student has not identified any proposed resolutions and therefore the complaint is also insufficient in that regard.

Because only Twin Rivers filed an NOI, the NOI is granted as to Twin Rivers only. Student will be granted an opportunity to amend the complaint.

Finally, regarding Twin Rivers' motion to dismiss, Twin Rivers argues that Student failed to serve a copy of the complaint, filed by Student on September 20, 2012, on the district, and that it received a copy of the complaint from San Juan on September 24, 2012. Twin Rivers fails to state any facts whatsoever that establish that it was prejudiced in any way by the delay of one to two business days that would justify consideration of dismissal of

the complaint as to Twin Rivers, particularly given its timely-filed NOI. Additionally, because the NOI is granted, Twin Rivers' request for dismissal is moot.

Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH at (916) 263-0880 for assistance in amending their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D) as to Twin Rivers, only.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸ If Student is seeking an expedited hearing, Student shall plead the appropriate facts and state with specificity the factual basis for his request for an expedited hearing.

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), including proposed resolutions to the extent known and available to Student at the time of filing, 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 only as to Twin Rivers, and shall proceed to hearing against San Juan.

5. All dates previously set in this matter are vacated as to Twin Rivers, only. All previous set dates are confirmed as to San Juan.

Dated: September 28, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.