

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016020414

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 04, 2016, Student filed a Due Process Hearing Request¹ with the Office of Administrative Hearings naming Riverside Unified School District. On February 19, 2016, Riverside filed a Notice of Insufficiency 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. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185,

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

supra, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

In his Complaint, Student alleges the following issues:

1. Riverside denied Student a FAPE by failing to assess Student in all areas of his suspected disability from at least February 2014 to the present as follows:
 - a. inappropriate psychoeducational assessment;
 - b. no behavior assessment;
 - c. no ERMS evaluation;
 - d. no speech assessment until October 2014;
 - e. inappropriate speech assessment;
 - f. no assessment of Student's independent living/adaptive skills;
 - g. no occupational therapy or APE assessment until 2015, and no physical therapy assessment ever;
 - h. inappropriate OT evaluation;
 - i. no assistive technology evaluation; and
 - j. no health/developmental/functional hearing or vision assessment.

2. Riverside denied FAPE by failing to provide Student with an appropriate educational program to meet his unique needs from at least February 2014 to the present as follows:
 - a. failure to provide appropriate placement and services;
 - b. failure to provide a safe learning environment and lack of response to student bullying resulted in denial of FAPE.; and
 - c. failure of IEP to provide appropriate goals.
3. Procedural Violations as follows:
 - a. despite documentation providing that Spanish was the primary language of Parents and Student, Riverside failed to provide Spanish language translations of IEPs and key documents;
 - b. Riverside violated Student and Parent's procedural rights by failing to provide a full and complete copy of Student's educational records upon request; and
 - c. Riverside violated Student and Parent's procedural rights by predetermining placement, failing to convene IEP meetings, and failing to provide prior written notice.

Riverside asserts that:

1. The complaint is deficient with respect to all issues set forth in the complaint;
2. Student failed to include a sufficient factual basis to support Student's claim in Issue 2.b. that Student suffered constant bullying during the statutory period and that the District failed to intervene in response to the bullying;
3. Student failed to specify specific documents to support Student's claim in Issue 3.a. that certain documents were not translated into Spanish for Parents.

However, a review of Student's Complaint indicates that the facts set out therein are sufficient to put Riverside on notice of the issues forming the basis of the complaint including Issues 2.b. and 3.a. Student alleged in Issue 2.b. that he suffered constant bullying from his non-disabled peers during the statutory period and that Parent reported the incidents to Riverside but Riverside failed to investigate or intervene which created a deprivation of Student's educational benefits. Student alleged in Issue 3.a. that Student's and his Parents' primary language is Spanish but that the IEPs, progress reports, educational records and notices were not translated into Spanish and additionally, that Riverside denied Parent's request for assistance from Spanish-proficient staff. These allegations are specific enough

and identify the issues with adequate related facts about the problem to permit Riverside to respond to the complaint and participate in a resolution session and mediation.

Therefore, all Student's statement of the three claims and proposed resolutions are sufficient. In particular, issues 2.b. and 3.a. are sufficiently pled to put Riverside on notice as to the basis of Student's claims.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: February 24, 2016

DocuSigned by:

Cheryl Carlson

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CHERYL CARLSON

Administrative Law Judge

Office of Administrative Hearings