

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010030982

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On March 10, 2010 Student filed a Due Process Hearing Request¹ (complaint) naming Mount Diablo Unified School District (District). On March 24, 2010, the District filed a Notice of Insufficiency (NOI) 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.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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 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

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)

⁴ 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.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act 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 ALJ.⁷ Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

DISCUSSION

Student alleges nine issues in his complaint. All of the issues, with the exception of one, are sufficient. The District argues that Issues number 1, 2, 3, 5, 6, 8, and 9 contain allegations that are beyond the two-year statute of limitations for filing an IDEA complaint. The District asks that OAH dismiss all allegations outside the two-year statute.

When an ALJ determines whether or not a complaint is sufficient, the ALJ ascertains whether each of the issues is stated in a way that provides the responding party with sufficient information to address each claim in a resolution session or mediation, or to defend against each claim in a hearing. As stated, issues 1, 2, 3, 5, 6, and 8 are sufficiently pled to put District on notice as to the basis of Student’s claims generally. An NOI is not the proper means by which to seek determination of the District’s contentions, as the only determination to be made upon the filing of an NOI is the sufficiency of the complaint on face. The District’s contentions may be litigated at hearing as an affirmative defense, or may be addressed in a Motion to Dismiss supported by sufficient facts.

Issue 9 concerns student records. Student cites the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. section 1232g, in establishing this claim. Student asks that OAH order the District to maintain his records in a different manner than it currently maintains them. OAH does not have jurisdiction to decide issues relating to FERPA. Further, there are no allegations that establish that this issue concerns the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. Therefore, Issue 9 is insufficient as pled.

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).

ORDER

1. Issues 1 through 8 of Student's complaint are sufficient under section 1415(b)(7)(A)(ii).

2. Issue 9 of Student's complaint is insufficiently pled under section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸

4. The amended complaint shall comply with the requirements of 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 hearing shall proceed only on Issues 1 through 8 in Student's complaint.

Dated: March 26, 2010

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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