

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. 2010041517

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

On April 28, 2010, Attorney for Student, filed a Due Process Hearing Request¹ (complaint) naming Riverside Unified School District (District).

On May 3, 2010, Attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint and a Motion to Dismiss Student's complaint. Student did not respond.

APPLICABLE LAW

The named parties in 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) of title 20 of the United States Code.

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 hearing officer.⁷

DISCUSSION

Student states that since March 10, 2010, District has refused to allow him to attend high school and has not provided him with any educational services in his home, thereby denying Student a FAPE. Student was receiving special education services while attending Martin Luther King High School. Student states that he went to live with his maternal grandmother when she was given temporary custody. Student asserts that when his grandmother tried to transfer Student from Martin Luther King High School to Arlington High School, where she lived, District refused.

The facts alleged in Student’s complaint involve questions regarding where Student should attend school, District’s enrollment policies, who holds Student’s educational rights, and the terms of a custody order. These issues are outside the jurisdiction of OAH. Student’s complaint fails to identify issues and adequate related facts about a problem 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. Accordingly, Student’s statement of the claims is insufficient.

Since the complaint is insufficient, District’s motion to dismiss is moot, and accordingly is denied.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student’s complaint is insufficiently 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).

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

3. 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.

4. District's motion to dismiss is denied.

Dated: May 6, 2010

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings

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