

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010080410

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On August 9, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Temecula Valley Unified School District (District) as the respondent. Student identified 11 “problems” and proposed resolutions. On August 19, 2010, District timely filed a Notice of Insufficiency (NOI) in which it contends that the complaint provides it with insufficient notice of the dates and/or IEP documents at issue, how Student contends he was denied a free appropriate public education (FAPE), and what the proposed resolutions are. As discussed below, District is correct; however, Student will be given a chance to file an amended 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

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). Unless otherwise indicated, all subsequent statutory references are to Title 20, United States Code.

² § 1415(b) & (c).

³ § 1415(b)(7)(A)(ii)(III) & (IV)

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 ALJ.⁷

DISCUSSION

Here, Student’s complaint fails to set out sufficient facts to put the District on notice of the issues. Each “problem” alleged will be discussed in order to provide some additional guidance for Student should they wish to amend the complaint.

As to Problem One, it is insufficient because it does not specify when the alleged problem occurred. The allegations generally refer to a time period prior to the 2008-2009 school year, but are not specific. In general, with limited exceptions, due process hearings only concern the time period within two years prior to the date of filing. A more specific date is required. Although it appears Student is challenging the placement at the time, the proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Two is insufficient because it also lacks specific dates. Further, it cannot be determined how Student is alleging the placement at issue was inappropriate. Although it appears Student is challenging the placement at the time, the proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Three is insufficient because it alleges that Student was provided a placement that he should have been in all along. It does provide a month and year that the change occurred, but fails to allege exactly how the program was inappropriate. The

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).

proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Four is insufficient because although it alleges a placement transition was not successful, it fails to allege specifics as to why it was not an appropriate placement and/or what the District should have otherwise provided. Although it appears Student is challenging the placement at the time, the proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Five is insufficient because without a specific date it alleges that at some point Parents moved and requested a new placement. It is not clear how Student is alleging that the placement at the time was inappropriate other than not his school of residence. Although it appears Student is challenging the placement at the time, the proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Six is insufficient because it fails to allege a specific time frame. Also, the proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Seven is insufficient because it cannot be determined when the IEP team meeting at issue happened. It appears that Student is attempting to allege that he was not offered an appropriate placement, but there are no details from which it can be determined why Student is alleging the offered placement was not appropriate. Although it appears Student is challenging the placement at the time, the proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Eight is insufficient because the time period Student is talking about cannot be determined. The facts indicate that some kind of evaluation was eventually done, but without a time frame and more details about what the District should have done differently, the allegation is insufficient. The proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Nine is insufficient because although it mentions some months, it does not provide a specific year. Also, it is unclear whether Problem Nine is repeating or elaborating on Problem Six. It is not clear whether Student is challenging the placement, or a lack of related services. The proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

Problem Ten is insufficient because, although it alleges that OT should not have been reduced, it fails to allege a specific time and/or procedure by which this was done. Although

not specific, it appears that as a proposed resolution Student seeks behavior services, OT services, and compensatory OT.

Problem Eleven is insufficient because the ALJ cannot determine how parents are alleging Student was denied a free appropriate public education. The allegation refers to an offer of an NPS placement with a temporary placement in a District classroom until the NPS could be implemented. It is not clear whether Student is challenging the appropriateness of the NPS placement or is making some other claim. The proposed resolutions are not specific, and generally state that Student now needs additional counseling, OT, speech, transition supports and placement in an autism program.

In sum, Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸ 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 for assistance in amending their complaint.
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. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: August 23, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

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