

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2010080971

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 19, 2010, Parent, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) against the Riverside County Office of Education (County). On September 14, 2010, County 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 title 20 United States Code section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings (OAH) and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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

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). All references are to title 20 United States Code unless noted.

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

resolution of the problem to the extent known and available to the party at the time.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student filed his complaint on August 19, 2010. County filed its NOI on September 14, 2010, which is more than 15 days after the filing of the complaint. However, County asserts that it did not receive the complaint until August 31, 2010, after it received notice from OAH that a complaint had been filed. Accordingly, because County’s NOI is filed within 15 days of being served with Student’s complaint, the NOI will be considered.

Student alleges five issues for resolution, some of which are sufficient and some of which are insufficient. Student’s Issue No. 1 asserts that County denied Student a FAPE during the 2008-2009 school year when it failed to provide an appropriate sign language interpreter for the entire school day. Student has attached a factual statement to the form complaint. Within that statement, Student provides sufficient facts relating to the problem

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

identified in Issue No. 1 to allow County to respond to the complaint and participate in a resolution session and mediation. Accordingly, Issue No. 1 is legally sufficient.

Issue No. 2 in Student's complaint alleges that County denied Student a FAPE because it failed to provide him with deaf-hard-of-hearing services. However, the complaint fails to provide facts relating to the identified problem. For example, Student fails to identify the deaf-hard-of-hearing services he required, or the time period Student asserts he was denied deaf-hard-of-hearing services. Issue No. 2 does not provide County with the required notice of a description of the problem and the facts relating to the problem. Issue No. 2 is legally insufficient.

Issue No. 3 in Student's complaint alleges that County denied Student a FAPE because it failed to provide him with equal access to the curriculum, thereby preventing him from earning sufficient credits. The complaint and factual statement fail to provide necessary facts relating to the alleged problem in Issue No. 3. For example, Student does not identify the school year or describe the credits he failed to earn. Issue No. 3 does not provide County with the required notice of a description of the problem and the facts relating to the problem. Issue No. 3 is legally insufficient.

Issue No. 4 in Student's complaint alleges that County failed to meet time lines. However, the complaint does not provide any facts relating to the identified problem. For example, Student fails to identify a school year or time period, and fails to identify the time lines he is alleging were not met by County. Issue No. 4 does not provide County with the required notice of a description of the problem and the facts relating to the problem. Issue No. 4 is legally insufficient.

Issue No. 5 alleges that County failed to "comply with State" and that an administrator has mistreated Parent. The complaint fails to identify what County should have complied with that has resulted in a denial of FAPE. For example, the complaint states that Parent filed a "state complaint" in 2009, but fails to provide details of the complaint or how County failed to comply with any resolution of the complaint by the State of California. It fails to identify how the County administrator has mistreated Parent and how that has resulted in a denial of FAPE or concerns the identification, evaluation or educational placement of Student. Therefore, Issue No. 5 does not provide County with the required notice of a description of the problem and the facts relating to the problem. Issue No. 5 is legally insufficient.

Student's proposed resolutions request monetary damages, vocational training, compensatory education and accountability from County administrators. 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).) The proposed resolutions stated in Student's complaint are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (See Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issue No. 1 of Student's complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues No. 2 through 5 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States section 1415(c)(2)(E)(i)(II).⁹

4. The amended complaint shall comply with the requirements of title 20 United States Code 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 Issue No. 1 in Student's complaint.

Dated: September 15, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.