

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010100403

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On October 18, 2010, Student filed a motion to amend his due process complaint. The Office of Administrative Hearings (OAH) granted Student's motion on October 25, 2010. On November 5, 2010, the Folsom Cordova Unified School District (District) timely filed a Notice of Insufficiency as to all allegations in Student's amended complaint. For the following reasons, Student's complaint is insufficient as pled.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>1</sup> 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 (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 the complaint was filed.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> 20 U.S.C. § 1415(b) & (c).

<sup>2</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>6</sup>

## DISCUSSION

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).) Student’s amended complaint is confusing in that none of his issues are numbered and because the amended complaint combines what appear to be issues for a due process hearing with copies of letters sent by Student’s parent to the District. It is nearly impossible to determine where the issues and factual background of the amended complaint end and the copies of the letters to the District begin. In its NOI, the District has attempted to define the issues based on the paragraphs in the 41-page amended complaint in which the first sentence is in boldface type. The District has counted and therefore addressed 19 issues. However, even assuming those are the issues which Student wishes to address in this due process proceeding, none of the issues contains a proposed resolution. Instead, Student’s amended complaint states that “the fact that the District’s conduct has been so atrocious arbitrary, capricious, disingenuous and outright deceitful, it is impossible to conceive a resolution they will abide by.”

The purpose of a proposed resolution is to inform the administrative law judge hearing the case of what Student believes he needs in order to compensate him for any violations of his rights if he prevails at hearing. It is Student’s burden to prove at hearing not only that his rights have been violated but that he is entitled to requested remedies. As written, Student’s amended complaint contains no proposed remedies and therefore no resolution should he prevail on any or all of his alleged issues. Student’s amended complaint is therefore insufficient because no resolutions have been proposed.

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<sup>4</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>5</sup> *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.].

<sup>6</sup> 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).

Additionally, in addressing the substance of Student's amended complaint, the District is correct that the allegations are insufficient to put it on notice of the issues it must defend against at hearing. The issues are not numbered and it is nearly impossible to determine which paragraphs of the 41-page document are issues for hearing and which are merely copies of letters to the District. The majority of the issues fail to describe the time period at issue or the individualized education program (IEP) to which the issue pertains. As written, the amended complaint forces the District to attempt to guess what Student's issues for hearing are. Student's amended complaint is therefore insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

Should Student decide to file an amended complaint in response to this Order, he must endeavor to identify each issue, preferably by numbering them, and to identify the time period at issue, the IEP at issue if pertinent, and the underlying facts supporting his allegation. He must also identify proposed resolutions for each issue pled, to the extent that a remedy can be determined at the time Student files an amended complaint. The fact that Student believes that the District may not be willing to comply with a remedy ordered by OAH is insufficient reason for Student to fail to provide a proposed remedy in his complaint.

#### ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>7</sup>
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

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<sup>7</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. All dates previously set in this matter are vacated.

Dated: November 8, 2010

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings