

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

OCEAN VIEW SCHOOL DISTRICT,
WESTMINSTER SCHOOL DISTRICT, and
WEST ORANGE COUNTY
CONSORTIUM FOR SPECIAL
EDUCATION.

OAH CASE NO. 2010110349

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 8, 2010 Student filed a Due Process Hearing Request¹ (complaint) naming the Ocean View School District (Ocean View), the Westminster School District (Westminster) and the West Orange County Consortium for Special Education (WOCCSE). The three educational entities are collectively referred to herein as the respondents.

On November 23, 2010, the respondents timely filed a joint 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).

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).

² 20 U.S.C. § 1415(b) & (c).

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

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 Administrative Law Judge.⁷

DISCUSSION

Student’s complaint states that he is eligible for special education as a student who is deaf. He states that he has a cochlear implant to enable him to access sound, in particular speech. Student alleges that Westminster is his school district of residence but that Westminster did not have the ability to provide him with a free appropriate public education (FAPE) to meet his needs. Therefore, according to Student’s complaint, Westminster entered into a series of interagency agreements with Ocean View and WOCCE to provide him with an educational program.

Student’s complaint alleges that all three respondents have failed to provide him a FAPE. In issue one, he contends that the individualized educational programs (IEP’s) developed by the respondents on May 8, 2009, February 26, 2010, and October 6, 2010, failed to consider, develop, utilize, and respect his preferred mode of communication because

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.

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).

the placement offered in the IEP's included the use of sign language, had inappropriate student-teacher ratios, had inadequate or non-existent technology necessary for Student, and had inappropriate acoustics. Student also alleges that his parents were not included in Student's speech/aural habilitation sessions, and that language between Student and his peers was not facilitated. Student further alleges that the placement, services, goals, modifications, and accommodations were not appropriate for him resulting in a loss of education.

The respondents contend that issue one is insufficient for two reasons. First, they contend that it is unclear which of the three are alleged to have committed each of the violations of Student's rights delineated and that it is unclear which respondent denied a FAPE as to each of the identified IEP's. Respondents assert that Student moved during the period of time covered in Student's complaint and now resides within the boundaries of Ocean View. The respondents therefore contend that any violations alleged as to Student's October 8, 2010 IEP can only pertain to Ocean View. The respondents also contend that the complaint improperly names WOCCSE as a respondent. The respondents contend that Student's complaint fails to identify, even in the factual background of the complaint, which services, goals, modifications, and accommodations were inappropriate for Student and why they were inappropriate. Finally, respondents contend that issue one is insufficient because Student's complaint fails to identify what type of technology he required and the basis for the need, or how and why acoustics were inappropriate for him.

Respondents' argument that Student fails to identify which entity was responsible for each alleged violation is not persuasive. The introductory paragraphs of the complaint specifically state that Westminster, Ocean View, and WOCCSE entered into an interagency agreement to provide Student with an educational program. The complaint therefore identifies each as having responsibility for the alleged violations although the complaint identifies Westminster as the ultimately responsible school district since it was Student's district of record. The respondents' assertion that Student moved prior to the October 6, 2010 IEP team meeting does not affect the outcome of the analysis here. First, respondents provide no evidence in support of this assertion in their NOI. Second, such evidence, even if provided, would turn the NOI into a motion for summary judgment, which is beyond the scope of an NOI. If any of the three respondents believe that they were not responsible for Student's education at any time alleged in the complaint, they may raise that as an affirmative defense at hearing.

However, the respondents' assertion that Student fails to provide adequate notice of many of his allegations in issue one is well-taken. While Student gives details as to why he believes that the respondents' offer of placement in a classroom in which sign language was used did not offer him a FAPE, the respondents are correct that the complaint fails to identify which services he needed but was not offered, which IEP goals were inadequate and why, and what type of modifications or accommodations Student required in order to receive a FAPE. The complaint also fails to state what type of student-teacher ratio existed in the classroom offered in the three IEP's, why it was inadequate, and what type of ratio Student required. Furthermore, the complaint fails to describe what type of technology Student required or what was inappropriate about the acoustics in the classroom offered in the IEP's.

For these reasons, Student's issue one is insufficient as to all allegations other than the allegation that the placement offered in the IEP's at issue failed to consider, develop, utilize, and respect Student's preferred mode of communication.

In issue two, Student alleges that the respondents failed to assure that their offer of placement and services constituted an appropriate education to meet the unique needs of a deaf hard of hearing student under Education Code, section 56345, and title 20 United States Code section 1415(d). Respondents assert that this issue is insufficient because it fails to specifically identify which of the numerous factors of each code section respondents failed to consider or discuss. However, Student's reference to the code sections is sufficient to put the respondents on notice that he believes that they have not considered any of the factors alleged. It will be Student's burden to prove this at hearing.

ORDER

1. Issue one is sufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii) as to the parties named and as to the allegation that the placement offered in the IEP's at issue denied Student a FAPE by failing to consider, develop, utilize, and respect his preferred mode of communication.

2. Issue one is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D) as to the allegations that the services, goals, modifications, and accommodations offered in the IEP's did not offer FAPE, that there was an inadequate student-teacher ratio in the classroom offered, that there was inadequate technology offered, and that the acoustics were inadequate.

3. Issue two is sufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii).

4. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

5. 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.

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

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on issue one, as qualified in paragraph one above, and as to issue two, of Student's complaint.

Dated: November 29, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings