

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010110780

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 23, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming the Los Angeles Unified School District (District) as respondent. The complaint, in essence, listed the following allegations: (1) District failed to provide Student with a teacher; (2) Student has had speech and language therapy in her home language; (3) District denied Student's request for assistive technology devices; (4) District denied Student's request for a kindergarten placement; (5) District denied Student's request for a speech and language evaluation and services conducted by a specialist familiar with "Nigritian Ebonics"; and (6) District denied Student's request for home school placement.

On December 21, 2010, District filed a Notice of Insufficiency (NOI) as to Student's complaint, contending that Student failed to list any facts to support her allegations. District also contends that it did not learn of Student's complaint until December 14, 2010.

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).

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings 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 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 IDEA 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

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

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).

DISCUSSION

Here, District filed its NOI on December 21, 2010, 28 days after Student filed her November 23, 2010 complaint. Ordinarily, when a party files an NOI more than 15 days after receiving service of a complaint, the complaint is deemed sufficient. In the instant matter, District claims it did not receive Student's complaint until December 14, 2010. However, District's NOI included no declaration or any other evidence demonstrating when it actually received Student's complaint. Despite this, based on OAH's independent review of Student's complaint, it is clear that Student failed to list District as a named party. It is, therefore, reasonable to conclude that Student neglected to serve the complaint on District, as well. Accordingly, Student's complaint will not be deemed sufficient as a result of District's late NOI filing.

Student's complaint contains issues which are insufficiently pled, as it contains absolutely no facts demonstrating how District's actions relate to a proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of FAPE. Specifically, Student's complaint fails to include the nature of Student's disability, what time period Student allegedly suffered a denial of FAPE, the dates of all relevant IEPs, the dates and outcomes of any relevant assessments involved, or the dates of any offer of placement and services proposed by District. As such, Student's complaint 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 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).⁹
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. 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. (See Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance at (916) 263-0880 if they intend to amend their due process hearing request.

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

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: December 22, 2010

/s/

CARLA L.GARRETT
Administrative Law Judge
Office of Administrative Hearings