

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT AND SACRAMENTO
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2010120581

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On December 13, 2010, education advocate Darlene Anderson, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Sacramento Unified School District (District) and the Sacramento County Office of Education.¹ On December 22, 2010, attorney Daniel A. Osher, on behalf of the District, 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).

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).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 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 Administrative Law Judge.⁷

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).) Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an Individualized Education Program (IEP) meeting with the purpose of determining whether the conduct was a manifestation of the student’s disability. (34 C.F.R. § 300.530(e) (2006).) If the IEP team determines that the conduct was not a manifestation of the disability, then the school district may apply relevant disciplinary procedures applicable to children without disabilities, except that the district must continue to provide educational services and, when appropriate, perform a functional behavioral assessment of the student. (34 C.F.R. § 300.530(c), (d)(i), (ii) (2006).) If the IEP team determines that the conduct was a manifestation of the disability, then the school district must conduct a functional behavioral assessment or review an existing behavioral intervention plan, and return the student to his or her educational placement, unless special circumstances apply. (34 C.F.R. § 300.530(f)(1) (2006).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a

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).

code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a) (2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow the Office of Administrative Hearings (OAH) to make exceptions. (34 C.F.R. § 300.532(c)(2).) In such event, “(T)he [state education agency] SEA or [local education agency] LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

DISCUSSION

Student’s complaint alleges five issues against the District. Although the complaint is not framed as a request for an expedited hearing, Student Issues Three, Four and Five assert that the District failed to hold a timely manifestation determination hearing after changing Student’s placement, despite District’s basis of knowledge that Student might be eligible to receive special education services. Issues Three, Four and Five are subject to the provisions of an expedited hearing. The provisions of title 20 United States Code section 1415(k)(4)(B) that set forth the procedures for an expedited hearing are not subject to the NOI procedures under title 20 United States Code section 1415(c). Accordingly, only Issues One and Two are subject to District’s NOI.

Regarding Issues One, Student’s complaint does not contain sufficient factual allegations to provide the required notice to District such that District may be able to prepare a response, prepare for a resolution session, or prepare a defense for hearing. The complaint is comprised of a mix of language taken from OAH’s complaint form, the Federal Register and general statements regarding alleged violations. Issue One states that Student had an IEP in 2003, which is not being implemented by District, and at some time, Student returned to District from another placement. However, it fails to provide necessary information such as whether Student was previously exited from special education, whether he currently qualifies for special education, when he returned to District, whether Student had qualified for or been provided special education services in his prior placement and any details regarding the contents of the IEP Student asserts District has failed to implement. This is not an exhaustive list of why Issue One is not sufficient, but rather an example of information that would provide District with proper notice. Issue One is legally insufficient.

In Issue Two, Student contends that District is refusing to hold an IEP team meeting because Student’s IEP has expired. Again, the issue lacks necessary information to provide notice of the alleged problem to District. For example, it fails to identify the time period being challenged, fails to allege whether Student has been determined to be eligible for special education or whether District has refused to assess or has improperly assessed Student as ineligible for special education. Student fails to provide information regarding the

disability he may have that qualifies him for special education or what placement or services he is entitled to through an IEP. Accordingly, Issue Two is legally insufficient.

Student's proposed resolutions request that Student be assessed and specifically request a functional assessment. 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).) While the proposed resolutions are not well-defined, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Pursuant to title 20 United States Code section 1415(c)(2)(D), Student's complaint is insufficiently pled as to Issues One and Two.
2. Pursuant to title 20 United States Code section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint as to Issues One and Two.⁸
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, Issues One and Two will be dismissed, and the matter proceed solely on the expedited hearing request.
5. The District's notice of insufficiency as to Issue Three, Four and Five is denied. The expedited hearing as to Issues Three, Four and Five shall proceed as currently scheduled.

Dated: December 23, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings

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