

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HUNTINGTON BEACH UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2011010643

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 24, 2011, Tania Whiteleather, Attorney at Law, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH) naming Huntington Beach Union High School District (District).

On February 4, 2011, 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 The determination of sufficiency is made on the face of the complaint. (Ed. Code § 56502, subd. (d).)

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 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).)

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).

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 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 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 alleges four claims in the complaint, which are all insufficiently pled as discussed below. Student first alleges that he requires a “more restrictive” placement and “more intensive or different services” to address his needs. As his second issue, Student claims that he has required this “more restrictive” placement and “more intensive or different services” for the two year period preceding the filing of the complaint. Student’s third issue is an allegation that the District “removed” him from his “stay put” placement, and questions whether this removal was “justified” or “required.” Finally, as a fourth issue, Student alleges that the District violated his rights under the Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), also known as the Americans with Disabilities Act (ADA) and the Unruh Act (Civ. Code § 51 et seq.).⁸

It is unclear from reviewing the complaint on its face as to where Student is currently attending school. On the face sheet his school of attendance is identified as Marina High School, but this is followed by a question mark. The facts that can be gleaned from the complaint are as follows: Student has been eligible for special education for several years; for several years he has engaged in behaviors that have resulted in his being placed in Juvenile Hall; Student has substance abuse issues; Student has emotional problems; and at some point in time Student may have been involved in the theft of a laptop computer at school. The complaint does not say how he qualifies for special education, i.e. what eligibility criteria he meets under the Individuals with Disabilities Act (IDEA); what behaviors he has engaged in that have caused him to be confined in Juvenile Hall, or when he engaged in these behaviors and was confined; or the nature of his emotional problems and substance abuse issues. The information concerning the theft of a laptop does not contain basic information about when the theft occurred, and other specific details. Finally, it is

⁸ The District has also asked that this last claim be dismissed because OAH lacks jurisdiction to adjudicate violations of these statutes. However, because the complaint is found to be insufficient, this request is moot.

unclear as to whether Student is requesting an expedited due process hearing because he has been suspended or expelled from school. Nowhere in the complaint does he make this request.

As to the issues themselves, the first issue may be related to a recent offer by the District for placement, but there is no date given as to why this offer was made, or why this offer is inappropriate. Further, the issue is appears to be more of a suggested resolution, rather than a real issue, and in fact this is Student's proposed resolution.⁹ 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 resolution stated in Student's complaint is not well-defined, particularly since no information is given as to Student's current placement, or the District's current offer of placement, whichever is applicable.

Student's second issue appears to be an allegation that the District denied him a FAPE for the two years prior to the filing of the complaint. However, because he has failed to provide any information as to where he was placed and what special education services he was provided by the District, as well as what specific sort of placement and services he required during that time, the second issue, as pled, is insufficient.

In his third issue, Student seems to be claiming that he was removed from an educational placement, but the lack of specificity about what this placement was, what services he was receiving, and how he came to be removed from this placement, results in this claim being insufficiently pled. This is particularly concerning if, in fact, Student was attempting to establish his right to an expedited hearing due to some sort of disciplinary action by the District.

Finally, as previously discussed, Student's fourth issue alleges violations of the ADA and Unruh Act. However, without addressing whether OAH even has jurisdiction to address these issues, the lack of a clear statement of the underlying facts in the complaint renders this issue insufficiently pled.

Student has failed to provide the District with the required notice of a description of the problem and the facts relating to the problem, and therefore his complaint is insufficiently pled.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

⁹ The District has also complained that the proposed resolution is vague.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰

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.

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

Dated: February 8, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)