

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LIBERTY UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2011031491

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On March 28, 2011 Student filed a Due Process Hearing Request¹ (complaint) against the Liberty Union High School District (District).

On May 13, 2011, John Saylor, Director for Special Services for District, filed a Notice of Insufficiency (NOI) concerning Student's complaint.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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 District also requests a dismissal of Student's complaint because the complaint "fails to identify any issues relating to the provision of special education and related services by the District," and because "none of the allegations in [Student]'s complaint occurred during a time when Student was enrolled in the District." OAH will issue a separate ruling on the motion to dismiss.

³ 20 U.S.C. § 1415(b) & (c).

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

However, a 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.⁹

DISCUSSION

Student’s complaint was originally filed by an attorney on March 28, 2011. The proof of service included with the complaint indicates that the complaint was served on the District on March 28, 2011. On April 4, 2011, the attorney sent a letter to OAH asking that the complaint be dismissed without prejudice. On April 21, 2011, before OAH had finalized

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).

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

the closing of the file, Student's parent advised OAH in writing that she had never authorized the attorney to withdraw the complaint, Therefore, OAH reopened the file on May 3, 2011, but reset the timelines to reflect the new opening date for the case. The 45-day timeline for issuance of the decision in the case was reset by OAH in order to allow parties a chance to hold a resolution session meeting. However, this action by OAH did not reset the 15-day timeline for filing a NOI pursuant to Title 20 United States Code section 1415(c)(2)(C), and Education Code section 56502, subdivision (d)(1).

District's request for dismissal based on insufficiency was dated and filed with OAH on May 13, 2011, which is more than 15 days after District received Student's complaint. District's Notice of Insufficiency (NOI) was not filed within the statutorily required timeline. Therefore, Student complaint is deemed sufficient, and District's motion to dismiss based on insufficiency is denied.

ORDER

1. The complaint is deemed sufficient under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 17, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings