

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VALLECITO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2011070801

ORDER DENYING STUDENT'S
REQUEST TO AMEND ISSUES

On October 10, 2011, the undersigned Administrative Law Judge conducted a telephonic prehearing conference (PHC). Christian M. Knox and Bradford Lacy, Attorneys at Law, appeared on behalf of Student. Eliza J. McArthur, Attorney at Law, appeared on behalf of Vallecito Union School District (District). An order following the PHC was issued on October 11, 2011, which set out the issues for hearing.

On October 20, 2011, Student filed an issues statement seeking to further clarify the issues set forth in the October 11, 2011 PHC order. On October 24, 2011, District filed a response. As discussed below, because Student seeks to amend the issues, Student's "clarification" is treated as a motion.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ 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.² These

¹ 20 U.S.C. § 1415(b) & (c).

² 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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.³

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing.⁴ The filing of an amended complaint restarts the applicable timelines for the due process hearing.⁵

DISCUSSION

On July 22, 2011, Student filed the complaint in this matter, which set out her issues for hearing and resolution. On September 6, 2011, Student filed a PHC statement, which also set out her issues for hearing. On October 5, 2011, after the initial PHC was continued, Student filed an amended PHC statement, setting out her issues for hearing.

Student's complaint consisted of two issues pertaining to the offer and provision of a FAPE during the 2009-2010, 2010-2011 and 2011-2012 school years (SYs). Both issues had sub-issues.⁶ Only one issue, concerning whether Student was offered placement in the least restrictive environment (LRE) was raised for the 2011-2012 SY. The issue for 2011-2012 was alleged as a sub-issue within the issue for 2010-2011 SY.

During the subsequent PHC statements of September 6 and October 5, 2011, Student separated out the sub-issue regarding LRE for 2011-2012 into its own issue and therefore, set forth three issues. Student also specifically listed the transportation issue for 2009-2010 SY as a sub-issue.

During the PHC of October 10, 2011, the parties were given a full opportunity to discuss the issues for hearing. Student was asked to specify each area of dispute and the

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ 20 U.S.C. §1415(c)(2)(E)(i)(II).

⁵ 20 U.S.C. §1415(f)(1)(B).

⁶ The complaint fails to specifically list a challenge as to transportation services for the 2009-2010 SY, although the challenge is set out in the facts supporting the broader issue of a denial of a FAPE during 2009-2010 SY.

parties were given sufficient opportunity to question the wording and finalization of the issues for hearing. In fact, during the PHC, Student expanded on the issue for the 2011-2012 SY and adopted essentially all of the sub-issues for the 2010-2011 SY into the 2011-2012 SY challenge. District agreed to the final wording of the issue, and sub-issues, pertaining to the 2011-2012 SY.

Student's October 20, 2011, issue statement fails to identify how Student disagrees with the PHC order of October 11, 2011. It appears Student's clarification document contains slight changes to some of the issues and sub-issues set out in the PHC order. For example, with respect to the 2009-2010 SY, the PHC order states that Student challenges District's failure to provide measurable goals in the area of occupational therapy, specifically self-care. Student's clarification issue statement drops the "self-care" specificity.

As a further example, Student's complaint and PHC statements allege that District failed to provide mainstreaming opportunities for the relevant time period. During the PHC this was narrowed and specified as mainstreaming in the areas of reading and math. Student's clarification issue statement states that Student was denied mainstreaming for "at least fifty percent of her school day," for each of the SYs at issue.

A party to a due process hearing is entitled to proper notice of the problems, or issues for hearing, and the factual basis for those problems. If a party desires to amend those identified issues, the party may file an amended complaint. Issues for hearing may be further discussed and finalized at the PHC.

It appears that Student's October 20, 2011 issue statement seeks to expand or amend the issues in this case. District has not agreed to such an amendment of the issues for hearing. The parties are bound by the issues, as they were discussed, and finalized at the PHC, and as they are set out in the PHC order.⁷ If Student is seeking to amend her issues for hearing she should file an amended complaint, or a separate complaint.⁸ Here, Student is bound by the issues as set forth in her complaint and as further discussed and finalized at the PHC. Accordingly, to the extent that Student's issue statement of October 20, 2011, seeks to amend the issues, the request is denied.

⁷ A party is entitled to withdraw any issue at any time prior to the hearing without need for approval from OAH.

⁸ However, at this point the matter is set for hearing within five days of this order and Student will require consent from District to amend her complaint.

ORDER

Student's request to amend the issues for hearing is denied.

Dated: October 28, 2011

/s/

BOB VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings