

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011090998

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 27, 2011, Student filed concurrently an expedited Due Process Hearing Request (expedited complaint) and a non-expedited Due Process Hearing Request¹ (complaint) against the Lincoln Unified School District (District). On September 28, 2011, the District filed a Notice of Insufficiency (NOI) as to the 20 issues for hearing in Student's non-expedited complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the non-expedited 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 non-expedited 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

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).

providing the 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 Individuals with Disabilities Education Improvement Act 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

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student’s conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested and for a decision to be rendered within 10 school days of the conclusion of the hearing. With respect to expedited hearing requests, there is no provision similar to that in title 20 United States Code section 1415(c)(2)(A), allowing for the testing of the sufficiency of an expedited hearing request.

DISCUSSION

Student’s non-expedited complaint contains 20 issues for hearing regarding the District’s purported failures to provide Student with a FAPE and to meet his behavioral needs, and due process violations during various disciplinary hearings . As to Issue 1, Student fails to allege sufficient facts about how the District denied him a FAPE between January 1, 2011, through September 22, 2011, because the non-expedited complaint does not contain any specific factual allegations relating to the problem to describe how the District denied Student a FAPE.

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).

In Issue 2, Student fails to state sufficient facts regarding how the authority of the vice-principal was determinative in whether Student received a FAPE. As to Issue 3, the issue regarding the whether the San Joaquin Board of Education provided Student with due process is not sufficiently pled because the San Joaquin Board of Education is not a party in Student's non-expedited complaint. Therefore, Issues 2 and 3 are not sufficient.

In Issues 4, 9, 10 and 17, Student alleges that the District denied him a FAPE because the District failed to implement his behavior plan. Student does not allege sufficient facts because the non-expedited complaint does not identify the behavior plan at issue and how the District failed to implement this plan. Accordingly, Issues 4, 9, 10 and 17 are legally insufficient.

In Issues 5 and 6, Student alleges that the vice-principal and the high school staff, respectively, failed to implement Student's individualized education program (IEP). However, the non-expedited complaint does not contain any specific contentions how the vice-principal and high school staff failed to implement Student's IEP in whole or in part. Therefore, Issues 5 and 6 are not sufficient.

Issues 7, 8, 13, 14, 15, 16 and 19, relate to whether the District followed the required procedures during the disciplinary hearing process, which are also issues in Student's expedited complaint. To the extent that Student alleges in the non-expedited complaint that the District failed to provide him with a FAPE as to fair and impartial hearings, the non-expedited complaint does not contain adequate allegations how the District failed to follow its procedural requirements, which denied Student a FAPE. Accordingly, Issues 7, 8, 13, 14, 15, 16 and 19 are legally insufficient.⁸

In Issues 11 and 12, Student alleges that the District and District officials failed to rehabilitate Student. However, Student fails to allege why the District needed to rehabilitate Student for him to receive a FAPE, and the basis of the District's obligation to rehabilitate Student related to his disability. Therefore, Issues 11 and 12 are not sufficient.

In Issue 18, Student contends that the District violated Parent's procedural rights concerning various correspondence. However, the non-expedited complaint fails to allege what action the District undertook, or failed to take, regarding the correspondence that violated Parent's procedural rights and consequently denied Student a FAPE.

Finally, Student alleges in Issue 20 that the District failed to credit him for completed classes during the summer of 2011. Student fails to allege why the District needed to provide him with class credit and how this purported failure denied him a FAPE. Accordingly, Issue 20 is legally insufficient.

⁸ Nothing in this order addresses the adequacy of Student's allegations in the expedited complaint because an NOI is not available in an expedited hearing request to test the sufficiency of the expedited complaint.

Accordingly, the non-expedited complaint is insufficiently pled as it fails to include adequate allegations to put the District on notice as to the basis of Student's claims and proposed resolutions to permit the District to respond to the non-expedited complaint and participate in a resolution session and mediation.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parent requests the assistance of a mediator, he should contact OAH immediately in writing.

ORDER

1. Student's non-expedited 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 non-expedited 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 non-expedited complaint, the non-expedited complaint will be dismissed.
5. All dates previously set in this non-expedited matter are vacated. The expedited matter shall proceed as previously scheduled.

Dated: September 30, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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