

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CULVER CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011100891

ORDER DENYING DISTRICT'S
MOTION TO STRIKE; ORDER OF
DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On October 25, 2011, Student filed a filed a Due Process Hearing Request¹ (complaint) naming the Culver City Unified School (District).

On November 4, 2011, the District filed a response to Student's complaint, in which in moved to strike Student's Issue One. Student's Issue One states "Did the District have a 'basis of knowledge' that the student was a child with a disability?" In its motion, the District contends that Issue One should be stricken because Student's complaint does not contain any allegation that she was or is currently removed from school or current general education placement based upon any disciplinary action. The District therefore argues that the "basis of knowledge" doctrine is not applicable to Student's complaint.

Student filed an opposition to the District's motion on November 7, 2011. Student contends that 34 Code of Federal Regulations part 300.534(b) supports the allegation contained in Issue One of her complaint

APPLICABLE LAW

The District has provided no authority in support of its motion to strike a portion of Student's complaint. Neither federal nor state statute, nor federal or state regulations provide for a procedure striking allegations of a complaint in whole or in part. Rather, federal statutes and regulations provide a procedure under which the named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party

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).

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). Therefore, since it was timely filed within 15 days of the filing and service of Student's complaint, the District's motion to strike will be treated herein as a notice of insufficiency.

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 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 Act (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

DISCUSSION

It is unclear exactly what Student means to allege in her Issue One. If she is alleging that the District failed in its child find obligations because the District has not assessed her and found her eligible for special education, Student fails to make that clear in Issue One. If

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

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).

Student is somehow alleging that she has engaged in behavior that violated a school code of conduct, and was disciplined for that behavior, but is entitled to the protections of the IDEA because the District had a “basis of knowledge” that she was a child with a disability before the behavior occurred, Student has also failed to make that clear or to provide any facts in support of the allegation.

Student’s opposition to the District’s motion to strike further confuses the issue. Student cites to 34 Code of Federal Regulations part 300.534(b) as support for her stated issue that the District had a basis for knowledge that she was a child with a disability. However, that section of the Federal Regulation specifically relates to school disciplinary procedures involving children with disabilities. Student makes no allegations in her complaint, or in her opposition, that the District initiated disciplinary proceedings against her which would implicate the cited section of the Federal Regulations.

Student’s Issue One is therefore insufficient to put the District on notice of what the specific allegations against it are and what exactly it is to defend against. Student must clarify if she is contending that the District failed in its child find obligations or if she is contending that her behavior resulted in disciplinary action which would bring into play the “basis of knowledge” principle discussed in 34 Code of Federal Regulations part 300.534(b).

ORDER

1. Issue One of Student’s complaint is insufficiently pled under title 20 United States Code section 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).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.

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

4. If Student fails to file a timely amended complaint, the hearing shall proceed only as to Issue Two of Student's complaint.

Dated: November 9, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings