

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011120551

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 16, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming the Moreno Valley Unified School District (District).

On December 22, 2011, the, District timely 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

DISCUSSION

Student’s complaint contains two issues. In issue one he alleges that on November 28, 2011, his parents requested that the District conduct a functional vocational assessment for him. He contends that the District has neither conducted the assessment nor given his parents prior written notice of the reasons why it declines to perform the test. This issue is sufficiently pled to enable the District to respond to it and put on a defense at hearing.

In issue two, Student alleges that the District “locked” his individualized education program (IEP) document before his parents could sign it. As a resolution, Student requests that the District not lock the document before Student’s parents are able to view it in print and sign it. However, it is unclear why Student believes his rights or those of his parents have been violated. It is unclear whether Student’s contention is that his parents have not been able to review and read his IEP at all or if he is contenting that Parents never received a copy of the IEP, or if there is something else that forms the basis of Student’s allegation. The issue therefore is insufficient because it does not put the District on notice of against what exactly they must defend.

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).

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

Parents who are not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist them in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Student's parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. Student's parents may either contact OAH by telephone at (916) 263-0880 to request assistance, or they may make a request in writing.

ORDER

1. Issue one of Student's complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 2 of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
4. 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.
5. If Student's parents wish assistance from OAH in formulating the issues in the complaint, they may either make a request in writing with OAH in Sacramento, or make an oral request by telephone at (916) 263-0880.
6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue one of his complaint. .

Dated: December 27, 2011

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁸ Ed. Code, § 56505.

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