

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALAVERAS UNIFIED SCHOOL
DISTRICT AND CALAVERAS COUNTY
BOARD OF EDUCATION SPECIAL
EDUCATION LOCAL PLAN AREA.

OAH CASE NO. 2012010710

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 24, 2012, Student, filed a Due Process Hearing Request¹ (complaint) naming the Calaveras Unified School District (District) and the Calaveras County Board of Education Special Education Local Plan Area (SELPA). On February 3, 2012, District and SELPA filed a Notice of Insufficiency (NOI) as to Parent's complaint. On February 7, 2012, the Office of Administrative Hearings granted the NOI and gave Student 14 days to file an amended complaint.

On February 21, 2012, Student filed an amended complaint against the District and SELPA. On February 27, the District and SELPA filed an NOI as to the amended 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).

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 The District and SELPA concurrently filed a motion to dismiss, which is moot with the granting of the NOI as to the amended complaint.

³ 20 U.S.C. § 1415(b) & (c).

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.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 Individuals with Disabilities Education Act 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

DISCUSSION

Student’s amended complaint contains one issue, with five sub-issues, for hearing, alleging that the District and SELPA violated their child find duties, and the District failed to timely assess Student, did not offer Student placement at a charter school within the District, failed to provide adequate services and did not provide Parents with a complete copy of Student’s educational records. As to all sub-issues, the amended complaint fails to contain adequate facts. As to the child find issue, Student does not allege when the District and SELPA should have assessed Student and why they needed to do so. As to the charter school

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).

placement, Student fails to allege any facts that the District had the ability to place Student at the requested charter school, and whether that charter school was its own local educational agency that could determine which students to enroll. As to the District's purported failure to provide adequate services, the amended complaint does not refer to any individualized education program (IEP) at issue, or when the District failed to make an IEP offer. Finally as to the failure to assess and failure produce education records, the amended complaint does not include any allegations when the District should have assessed Student and failed to produce a complete copy of Student's education records. Accordingly, Student fails to allege sufficient facts and thus insufficiently pled as to the District and SELPA.

ORDER

1. Student's amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
3. The second 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.
4. If Student fails to file a timely second amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: March 2, 2012

/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.