

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
BEFORE THE

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2012050635

v.

RIALTO UNIFIED SCHOOL DISTRICT,

RIALTO UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012050064

v.

PARENTS ON BEHALF OF STUDENT.

ORDER DETERMINING
INSUFFICIENCY OF STUDENT'S
COMPLAINT

On May 15, 2012 Student filed a Due Process Hearing Request ¹ (complaint) naming Rialto Unified School District (District).

On May 18, 2012, District filed a Notice of Insufficiency (NOI) as to Student's complaint. Also on May 18, 2012 OAH issued a prehearing conference order and order granting Student's motion consolidating Student's complaint with District's earlier filed complaint for hearing.

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).

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).

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 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

The complaint alleges District denied Student a FAPE for the 2009-2012 school years and 2010- 2012 extended school years. Student alleges that his special day class is not meeting his needs because 1) District is not implementing his IEP, 2) Student is not making progress, and 3) Student is in an inadequate placement. Student alleges his IEP goals are immeasurable. Finally, Student alleges his behaviors have not improved and that he needs an Applied Behavioral Analysis (ABA) program.

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's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

With respect to Issue 1, Student did not identify which IEP the District failed to implement. With respect to Issue 2, Student did not identify the areas in which Student failed to make progress. With respect to Issue 3, Student failed to explain how his placement was inadequate. With respect to Issue 4, Student failed to identify which IEP and which IEP goals were immeasurable. Finally, with respect to Issue 5, Student failed to allege which behaviors have not improved.

ORDER

1. Student's 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).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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: May 30, 2012

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings

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