

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL
DISTRICT AND CORONADO UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012050894

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 22, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing. On June 8, 2012, Student filed an amended Request for Due Process Hearing (complaint).¹ Student's complaint named the Sweetwater Union High School District (SUHSD), the Coronado Unified School District (CUSD) and Ronald Lopez as respondents. On June 22, 2012, the CUSD filed a motion to dismiss, or in the alternative a Notice of Insufficiency (NOI) for this matter.² Also on June 22, 2012, the SUHSD filed a NOI as to Student's complaint.³

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ 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 CUSD's motion to dismiss is deemed moot as Student's complaint is insufficient.

³ On June 25, 2012, Student filed a second amended complaint. Student's second amended complaint is still pending before OAH and will not be addressed by this order.

⁴ 20 U.S.C. § 1415(b) & (c).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁵

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.⁶ 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.⁷

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁸ 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.⁹ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.¹⁰

DISCUSSION

⁵ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

⁷ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁸ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁹ *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.].

¹⁰ 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 alleges two claims, which are insufficiently pled as discussed below.

Student's first claim is contained within 56 paragraphs which conflate a factual background with what appears to be various and intermittent allegations against the respondents. However, it is difficult to ascertain what the specific allegations are, the time the allegations arose, or how a specific allegation denied Student a free and appropriate public education (FAPE). The claim is too general and overbroad, and fails to provide the respondents a specific understanding of the allegation. It would be helpful for Student to identify specific allegations and to delineate such allegations in a concise manner which is separate from the factual history.

Student's second claim is a general claim for a denial of FAPE against the respondents. This claim fails to provide any facts which constitute a specific claim of any sort. The claim fails to reference any specific Individualized Education Program (IEP) or conduct which is in dispute, or facts relating to the dispute. It would be helpful for Student to indicate the date of the IEP or conduct which is in dispute, a coherent description of the dispute, and to provide facts relating to the dispute.

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

With respect to Student's two issues, Student fails to (1) provide a description of the nature of the problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child; and (2) facts relating to the problem.

Therefore, Student has failed to state sufficient facts supporting this claim, and the complaint is insufficient.

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).¹¹

¹¹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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: June 25, 2012

IT IS SO ORDERED.

Dated: June 25, 2012

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings