

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012080271

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 9, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) with the Office of Administrative Hearings (OAH), naming the Lincoln Unified School District (District). On August 16, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.<sup>2</sup>

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>3</sup> 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) and Education Code section 56502, subdivision (c)(1).

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.<sup>4</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

---

<sup>1</sup> 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).

<sup>2</sup> On August 14, 2012, the District filed a motion to unexpedite Student's expedited complaint, which will be ruled upon in a separate order.

<sup>3</sup> 20 U.S.C. § 1415(b) & (c); Ed. Code 56502, subd. § (d)(1).

<sup>4</sup> 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.<sup>5</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>6</sup> 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.<sup>7</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>8</sup>

## DISCUSSION

Student’s complaint contains 16 issues for hearing. The issues involve numerous procedural violations during five individualized education program (IEP) team meetings, along with a brief factual narrative. However, Student complaint is not sufficiently clear because the complaint fails to coherently set forth whether the purported violations involved a violation of the IDEA (20 U.S.C. § 1400 et. seq.), the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11301, et seq.) (McKinney-Vento Act), over which OAH does not have jurisdiction to hear disputes, or inter-personal disputes between Parent and District personnel, which requires the District to guess which facts relate to Student’s contentions that the District denied Student a FAPE. (*Student v. Valley Center Union School District* (February 18, 2009) Cal.Ofc.Admin.Hrngs. Case No. 2009010785.) Accordingly, Student failed to allege sufficient facts as to issues in the complaint.

Accordingly, the complaint is insufficiently pled as it fails to include adequate allegations to put the District on notice as to the basis of Student’s claims and proposed resolutions to permit the District to respond to the complaint and participate in a resolution session and mediation.

---

<sup>5</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>6</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>7</sup> *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.].

<sup>8</sup> 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).

ORDER

1. 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).<sup>9</sup>
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: August 20, 2012

/s/

---

PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

---

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