

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALTA LOMA SCHOOL DISTRICT.

OAH CASE NO. 2013120320

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 6, 2013 advocate Peter Attwood filed a Due Process Hearing Request¹ (complaint) on behalf of Parent and Student with the Office of Administrative Hearings (OAH) naming the Alta Loma School District (District).

On December 17, 2013, Amy Foody, program manager with the West End Special Education Local Plan Area timely filed a Notice of Insufficiency (NOI) on behalf of the District as to Student's complaint as well as a Motion to Dismiss Student's complaint².

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).

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

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's motion to dismiss is moot with the granting of this NOI.

³ 20 U.S.C. § 1415(b) & (c).

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 (IDEA) 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 identifies one issue in his complaint, namely whether he qualifies as a homeless student such that he is entitled to remain at Deer Canyon Elementary School, which Student alleges he has attended for many years and is his “school of origin” under the McKinney-Vento Act.

Student’s complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the nature of the problem as it relates to the initiation, identification, evaluation, placement or the provision of a FAPE to Student. The complaint does not allege that Student is eligible for, or currently receiving, special education or that the District has denied Student a FAPE, and fails to provide any information or facts showing when or how such a denial of FAPE might have occurred. Student’s complaint is void of any

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).

facts relating to any issue arising under the IDEA, and is therefore legally insufficient. Although Student will be permitted the opportunity to amend his complaint, Student is advised that OAH does not have jurisdiction over a claim based upon the McKinney Vento Homeless Assistance Act. (42 U.S.C. § 11431 et seq.)⁹

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.¹⁰ Parent is encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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
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.

⁹ There is an appeal process when a dispute arises between a school district and parent concerning a homeless student's educational placement. (42 U.S.C. § 11432(g)(3)(E).)

¹⁰ Ed. Code, § 56505.

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

6. The District's motion to dismiss is denied as moot.

Dated: December 19, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings