

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014100780

ORDER DETERMINING DUE
PROCESS COMPLAINT
INSUFFICIENT

On October 16, 2014 Student filed a Due Process Hearing Request¹ (complaint) naming Chino Valley Unified School District.

On October 22, 2014 District filed a Notice of Insufficiency (NOI) as to Student's complaint.

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).

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 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

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).

³ 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.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

Student’s complaint alleges three claims, which are all insufficiently pled. The first claim alleges that the District “at beginning of reimbursement” paid Mother for two round trips, and now is only paying for one round trip a day. The proposed resolution requests reimbursement for “money spent June. . August” and two round trips for future months.” These allegations do not contain sufficient facts. The allegations do not specify the reason why the District must reimburse Mother for transportation, such as that it is provided for in an individualized education program or a settlement agreement. The complaint does not specify the time frame of which Mother complains, such as when the “beginning of reimbursement was,” or in what year the District failed to pay for two round-trips “for June. . August.”

Student’s second claim alleges that the District sent transportation to “Hope Inc. after school at old address for pick up without permission.” The proposed resolution of this issue is that Student’s school year at Hope Inc. be extended for another school year. Again, these allegations do not contain sufficient facts, in that one cannot ascertain the dates upon this alleged failure to provide transportation occurred, or even what occurred. Did the transportation go to the wrong address to pick-up Student? On what dates? Was the

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).

transportation late? On what dates? What happened “after school?” Furthermore, neither the claim nor the proposed resolution state how the District’s alleged failures regarding Student’s transportation deprived Student of a FAPE or provide any other reason as to why Student’s school year at “Hope Inc.” should be extended.

Student’s third claim alleges that District was calling Mother on her phone. The proposed resolution is that District communicate with Mother only through e-mail or certified mail. This claim does not state when these telephone calls occurred, or what the calls were about. This claim does not state how District’s calling Mother on her telephone deprived Student of a FAPE or relate to Student’s identification, evaluation, or educational placement. In this regard, whether the District communicates with Mother by telephone or by e-mail or by certified mail is not generally an appropriate subject for a due process hearing.

In short, Student’s complaint is insufficiently pled in that the claims fail to provide District with the required notice of a description of the problem and the facts relating to the problem. Additionally, the proposed resolutions to the first and second claims are not well-defined. With respect to the third claim in particular, there are no facts to show how District’s telephone calls to Mother relate to whether Student is receiving appropriate or sufficient special education instruction, services, and placement

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

⁸ Ed. Code, § 56505.

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).⁹
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.

DATE: October 30, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings

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