

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND LOS ANGELES UNIFIED
SCHOOL DISTRICT SPECIAL
EDUCATION LOCAL PLAN AREA.

OAH CASE NO. 2009110462

DETERMINATION OF SUFFICIENCY
OF AMENDED DUE PROCESS
COMPLAINT

Pursuant to an order of the Office of Administrative Hearings (OAH) dated November 30, 2009, Jennifer Guze Campbell, attorney for Student, filed an Amended Due Process Hearing Request¹ (amended complaint) on December 11, 2009, against the Los Angeles Unified School District (District) and the Los Angeles Unified School District Special Education Local Plan Area (SELPA). On December 24, 2009, Mampre R. Pomakian, attorney for District and SELPA, filed a Notice of Insufficiency (NOI) concerning the amended complaint.

APPLICABLE LAW

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. (20 U.S.C. §§ 1415(b)(7)(A)(ii)(III), 1415(b)(7)(A)(ii)(IV);² Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies OAH and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed.

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 All statutory citations are to Title 20 United States Code unless otherwise noted.

Code, § 56502, subd. (d)(1).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

While Student's amended complaint provides some more detail than the initial complaint, it still does not contain sufficient facts to support his claims, and accordingly fails to meet the statutory pleading requirements. Student's amended complaint contains three issues as follows:

Issue No. 1

Student asserts that he has been denied a FAPE because District and SELPA refuse to recognize Student's counsel as the legal representative of Student and his parent. The amended complaint states District and SELPA were informed of Student's counsel's representation on October 21, 2009. Student filed the initial complaint on November 12, 2009, therefore, the period of alleged denial of FAPE is from October 21, 2009, through November 12, 2009.

Student contends that when his counsel asked for his educational records, and a list of individuals who had accessed his educational records, District and SELPA refused to recognize his counsel's representation. While Student has identified a problem, he has failed to provide a factual basis. A party has a right to initiate a request for due process hearing when there is a proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. Student has failed to set forth a factual basis for how he has been denied a FAPE by the District and SELPA's failure to recognize his legal counsel between October 21, 2009 and November 12, 2009. Accordingly, Issue No. 1 is insufficient.

Issue No. 2

Student asserts that District and SELPA have failed to provide educational records, and a list of individuals who had accessed educational records, to his counsel. Student made a written request on October 22, 2009, and the District and SELPA allegedly refused to provide records on October 28, 2009. The alleged basis for the refusal was that a specific written release from the parent was required by District and SELPA. Student contends that the refusal to provide documents is a violation of a parent's right to examine their child's educational records, and infringes upon his parent's right to work with a counsel of their choice. Therefore, Student contends he has been denied a FAPE.

However, OAH does not have jurisdiction over pupil record disputes unless special education law is involved. Student fails to allege facts specific to why the refusal to provide educational records on October 28, 2009, has resulted in a denial of a FAPE. Accordingly, Issue No. 2 is insufficient.

District and SELPA assert that Issues No. 1 and 2 do not raise permissible claims under section 1415(b)(7)(A)(ii)(III), and request the amended complaint be dismissed in its entirety. An NOI is not the proper means by which to seek determination of jurisdictional contentions, as the only determination to be made upon the filing of an NOI is the sufficiency of the complaint on its face. Provided there are sufficient facts showing that special education law is involved, jurisdictional contentions may be litigated at hearing as an affirmative defense, or may be addressed in a Motion to Dismiss supported by sufficient facts.

Issue No. 3

Student asserts that he has been denied a FAPE from November 12, 2007, through November 12, 2009. He contends that during this time period Student failed to make progress on his goals; District and SELPA failed to assess him in all areas of suspected disability; hold individualized education program (IEP) meetings to review a lack of progress; address each of Student's areas of disability pursuant to an IEP; and, provide a FAPE. Student states that the last IEP meeting was held on June 9, 2009, and while he had not met any goals from his prior IEP, the same goals were offered on June 9, 2009.

A complainant is not required to plead facts with particularity, but is required to provide a short and plain statement of the claims and the grounds upon which they rest. Student's identification of one IEP date, and generic contentions of a denial of FAPE, do not meet the statutory requirement. For example, Student fails to identify any specifics regarding the goals in the June 9, 2009 IEP that he asserts failed to offer a FAPE; he fails to identify other IEPs within the two years covered in the claim, and provide any specifics of how they failed to provide a FAPE, in either their development or in their implementation; Student fails to identify what his placement and services were during the time period for which he alleges a denial of FAPE; and he fails to identify any particular assessments or how they were deficient. Accordingly, Issue No. 3 is insufficient.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. Student's proposed resolutions request assessments, placement, and various other relief. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Pursuant to section 1415(c)(2)(D), Student's amended complaint is insufficiently pled, and District and SELPA's notice of insufficiency is granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³
3. The amended complaint shall comply with the requirements of 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: December 30, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.