

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT and RIVERSIDE
COUNTY DEPARTMENT OF MENTAL
HEALTH.

OAH CASE NO. 2011010573

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 19, 2011 Attorney Eric Freedus, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming Temecula Valley Unified School District (District), and Riverside County Department of Mental Health (RCMH).

On February 2, 2011, RCMH 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 (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 20 U.S.C. § 1415(b) & (c).

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 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 one claim with several subissues. Student alleges that he was denied a free appropriate public education (FAPE) by the District because it failed to “reassess him appropriately,” failed to make an “earlier” referral to RCMH, failed to offer him an “appropriate” placement, failed to complete the assessment and IEP process in a “timely manner,” and failed to offer him “appropriate services.” Student also alleges that he was denied a FAPE by RCMH because it failed to assess him in a “timely fashion,” and failed to offer him “any appropriate services.” All of the subissues are insufficiently pled, as discussed below.

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

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

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).

the problem. Student does not provide any information about when he was found eligible for special education services, and under what category his eligibility was established. He claims that the District should have assessed him when he refused to attend school from the beginning of the 2010-2011 school year. However, he then continues by describing events that occurred from February through mid July of 2010, which appear to be prior to the commencement of the 2010-2011 school year.

Student claims that the district failed “to reassess” him, but does not provide a date of that refusal, or when he was previously assessed. He complains about the lack of timeliness of assessments and the IEP process, but does not provide sufficient dates or facts to establish these claims, for example, the date or dates assessments were requested and approved by Parents, as well as when they were completed. Student claims that both the District and RCMH failed to offer him appropriate placement and services, but does not provide any specific information about what he was offered by them, other than outpatient services, and why they were inappropriate. Accordingly, Student’s complaint is insufficiently pled.

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).⁸
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: February 8, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)