

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011020840

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 24, 2011, Parent filed a Due Process Hearing Request ¹ (complaint) naming Twin Rivers Unified School District (District). On March 10, 2011, District filed a Notice of Insufficiency as to the 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings (OAH) and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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

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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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.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 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

The complaint includes 36 numbered issues. All but one of them fail to describe a problem of Student relating to the identification, evaluation, educational placement, or provision of a FAPE to Student, or fail to identify adequate related facts, or both.

Problem number 8 alleges that District did not provide speech and language since the beginning of this year. While minimal, this problem is sufficiently pled.

The following problem statements do not describe a problem relating to the identification, evaluation, educational placement, or provision of FAPE to Student: 2, 3, 9, 12, 18 through 22, and 36. For example, problem 2 alleges that District was found out of compliance by the California Department of Education three times. However, this does not

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).

describe a problem relating to the identification, evaluation, educational placement, or provision of FAPE to Student. Similarly, problem 9 states that District is harassing parent, child and his doctors and counselors. Without additional information, the problem statement does not describe something within the jurisdiction of a due process hearing. As a result, these problems are not sufficiently pled.

The following problem statements do not include adequate related facts: 1, 2 through 7, 10, 11, 13 through 17, and 23 through 35. For example, problem 1 alleges that District never performed adequate and proper assessments for Student, but it does not include the time period during which this allegedly occurred. Similarly, problem 15 alleges that Student is having mental and emotional problems aggravated by District, but it does not include the time period or identify the actions that are allegedly causing Student's problems. As a result, these problems are not sufficiently pled.

The complaint meets the statutory requirement for proposing resolutions to the problems to the extent known and available to Student at the time.

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.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issue 8 of the complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1 through 7 and 9 through 36 of the complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰

4. 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.

9 Ed. Code, § 56505.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on problem 8 in the complaint.

Dated: March 14, 2011

/s/

JUDITH A. KOPEC
Presiding Administrative Law Judge
Office of Administrative Hearings