

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011030361

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 2, 2011, Pamela K. Daves, Attorney for Student, filed a Due Process Hearing Request¹ (complaint) naming the Moreno Valley Unified School District (District). Student's complaint contained issues that were subject to an expedited hearing schedule, as well as issues that were subject to a non-expedited hearing schedule.²

On March 10, 2011, Constance M. Taylor, Attorney for District, filed a Notice of Insufficiency (NOI), motion to dismiss issues and motion to limit claims beyond the two-year statute of limitations.³

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ The party filing the complaint is not entitled to a hearing

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 On March 10, 2011, the parties entered into a stipulation where Student withdrew his request for an expedited hearing and District withdrew its motion to unexpedite the due process hearing. By separate order dated March 15, 2011, the parties request to unexpedite the matter and withdraw Issues one and two was granted.

³ Because some of Student's claims are found to be insufficiently pled and Student is granted leave to file an amended complaint, the Office of Administrative Hearings need not consider District's motions to dismiss claims and to limit claims beyond the statute of limitations.

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 resolution of the problem to the extent known and available to the party at the time.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

⁴ 20 U.S.C. § 1415(b) & (c).

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

DISCUSSION

Student alleges seven claims in the complaint, some of which are sufficient and some which are insufficient. Student's Issues one and two have been withdrawn and their sufficiency is not addressed in this order. The remaining issues are discussed below.

Issues three through five and seven are sufficiently pled to put District on notice as to the basis of Student's claims. Each of these issues is clearly defined and provides sufficient facts forming the basis of the issue. Accordingly, Issues three through five and seven provide District with sufficient information to permit District to respond to the complaint and participate in a resolution session and mediation.

With regard to Issue six, Student fails to allege the time when Parents made a request for records; thus, it is impossible for the District to discern whether they failed to meet the requirement as specified in Education Code section 56403, subdivision (n) to provide Parents with educational records within five business days. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

ORDER

1. Issues three, four, five and seven of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue six of Student's complaint is 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.

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 Issues one, two, three, four, five and seven in Student's complaint.

Dated: March 15, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings