

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011030676

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 14, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming the San Ramon Valley Unified School District (District).

On March 23, 2011, the District timely 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 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

Additionally, a complaint must contain proposed resolutions to the problems raised. The legal standard for resolutions as it pertains to a notice of insufficiency is only that the complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) There is no requirement that there be a legal basis for the resolutions for them to pass muster under a notice of insufficiency.

DISCUSSION

Student’s complaint, which her parents filed in pro per, contains seven claims or allegations. The last three basically state the same issue. The District challenges the entirety of the complaint, contending that the complaint as a whole fails to meet the minimal standards for due process complaints as described above. As will be elaborated below, while the majority of the District’s criticisms of Student’s complaint are well-taken, others fail to persuasively demonstrate that the allegations at issue are legally insufficient.

In issue one, Student states that the Vineland assessment was given as part of a multi-disciplinary assessment for Student dated February through March 2011, but that Student’s

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).

parents (herein sometimes “Parents”) have not completed the Vineland. The issue does not state whether the District failed to give the Vineland to Parents as part of the assessment process or if the issue is that Parents were given it but did not have time to complete it. In any case, this issue fails to state why the Vineland should have been included in the multi-disciplinary assessment and what harm, if any, Student has suffered by its exclusion. Finally, Student does not include a resolution for this alleged violation. The District is thus correct that issue one is insufficient as stated.

In issue two, Student states that the result of the ADOS (which is an assessment) indicates that Student does not exhibit autistic-like behaviors. The issue does not explain what Student is contending. For example, the issue does not state that the assessment was incorrectly administered, or that its findings are incorrect and that Student should, in fact, be found autistic. The confusion is compounded because Student fails to request a resolution for this issue. Rather, as a resolution, Student makes the statement that Student is autistic and continues to display the given deficits. The issue fails to state what deficits Student displays or what characteristics of autism behaviors she demonstrates, and on what basis the District should be aware that she is autistic. It also fails to provide any resolution for the issue. As pled, issue two is insufficient.

The District also is correct that Student’s issue three is insufficient. This issue states that Robert Willis’s report and goals are not noted in the assessment report. It also states that an agency named Stepping Stones has been working with Student since September 10, 2006. However, the issue fails to state who Robert Willis is, what report he wrote, or which assessment report should have referenced his own report. Additionally, this issue fails to state why the District was required to include Mr. Willis’s report, or what harm Student has suffered because it was not included. The issue also fails to state any connection between Stepping Stones and an alleged denial of a free appropriate education to Student. Issue three is insufficient as pled.

In issue four, Student informs that a District speech therapist told Parents that a report would be provided to them five to seven days before a March 11, 2011 individualized education program (IEP) meeting, but that Parents were not provided the report until March 9, 2011. The issue fails to state what report was to be provided to Parents, why the District had an obligation to furnish the report earlier than it did, even if it had promised to do so, or what harm Student or her parents suffered by not receiving the report until two days before the meeting. Significantly, this issue fails to request any resolution for the alleged violation. Issue four is therefore insufficient as pled.

The District alleges that issues five, six, and seven are also insufficient because not enough facts are given in support of the claims. However, read together, these three issues state the following: On March 9, 2011, Parents asked the District to postpone the IEP meeting scheduled for March 11, 2011, so that they could review the report given to them on March 9 and so that the Vineland assessment could be included. A special education local plan area employee “threatened” Parents to hold the IEP anyway, and denied Parents their parental rights to request a postponement. On March 11, 2011, Parents received a voicemail

from the District that the IEP meeting was held without them. Issues five and six propose as a resolution that the IEP meetings be postponed and/or not held without Parents. Although not artfully crafted, issues five, six, and seven, taken together, state a potential procedural violation of Student's and Parents' rights because the District allegedly refused to postpone the IEP meeting at Parents' request and then allegedly held the meeting in Parents' absence. These allegations, and the proposed resolution that the meeting be postponed and that future meetings only be held with Parents present, are sufficiently stated to put the District on notice of the issues against which it must defend. Issues five, six, and seven, when read together, are thus sufficiently pled to withstand the District's NOI.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) 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. Student's parents may either contact OAH by telephone or in writing. The telephone number for OAH in Sacramento is (916) 263-0880.

ORDER

1. Issues five, six, and seven of Student's complaint, when read together, are sufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues one, two, three, and four of Student's 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).⁹
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.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on issues five, six, and seven of Student's complaint.

8 Ed. Code, § 56505.

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

6. If Student's parents wish assistance from an OAH mediator in formulating the allegations of the amended complaint, they may either write to OAH in Sacramento or telephone OAH at the number indicated above.

Dated: March 28, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings