

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2011031087

DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 29, 2011, the Office of Administrative Hearings (OAH) issued an order finding Student's initial due process hearing request (complaint) to be insufficient. On March 30, 2011, Student filed a notice of amended complaint. The Palmdale School District (District) filed a notice of insufficiency as to Student's amended complaint on April 1, 2011.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ 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.² 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.³

¹ 20 U.S.C. § 1415(b) & (c).

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

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

DISCUSSION

As the District points out in its NOI, Student’s amended complaint fails to cure the deficiencies OAH found in Student’s initial complaint. The only changes Student has made in his amended complaint is to add the phrase “in the area of math” to the background information and statement of issue Student presents, as well as changing the phrase “so that he can be successful” to “so that his unique educational needs can be met” to the paragraph discussing the background facts of the case. Student makes no substantial changes or additions in his amended complaint that would explain why the District’s present educational program denies him a free appropriate public education, why he requires individual tutoring, or how and why his diagnosis of attention deficit hyperactivity disorder impacts his education to the extent that he requires individual tutoring.

In sum, Student has failed to add sufficient information that would cure the deficiencies OAH previously found in Student’s complaint. Student’s amended complaint is insufficiently plead as presently worded.

ORDER

1. Student’s complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁷

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.

Dated: April 5, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁷ The filing of an amended complaint will restart the applicable timelines for a due process hearing.