

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

REDLANDS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011040153

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT; RESETTING
MEDIATION ONLY TIMELINES

On April 4, 2011, Parent, on behalf of Student, filed a request for a Prehearing Mediation Conference¹ (mediation only) against the Redlands Unified School District (District). On April 11, 2011, Laura Chism, Due Process Program Manager, East Valley Special Education Local Plan Area (SELPA), on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's mediation only request, and a request to vacate the mediation date because Parent did not serve a copy of the request upon the District. Student did not submit a response.

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 Ed. Code, § 56500.3.

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 Individuals with Disabilities Education Act 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 (ALJ).⁷

DISCUSSION

An NOI is appropriate to challenge a request for a due process hearing, filed pursuant to Education Code, sections 56501 and 56502, to determine the sufficiency of the allegations to determine if the opposing party has notice of the issues forming the basis of the complaint to respond to the complaint and participate in a resolution session and mediation. However, Student does not request a hearing, but rather seeks to mediate the dispute with the District without going to hearing, as permitted by Education Code, section 56500.3. Education Code, section 56500.3, does not contain a mechanism for a party to challenge the sufficiency of a mediation only request. Therefore, the District’s NOI is denied as no authority exists for such a request with a mediation only request.

Regarding the issue of service of the mediation only request, Education Code, section 56500.3, subdivision (d), requires the party requesting the mediation only to serve a copy of the request on the opposing party. In this matter, the District established that it never received a copy of Student’s mediation only request. Therefore, Student needs to serve a copy of the mediation only request upon the District to initiate the mediation process.

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).

ORDER

1. The District's NOI is denied.
2. The scheduled mediation date is vacated.
3. Student shall serve a copy of the mediation only request upon the District and the East Valley SELPA, and send the Office of Administrative Hearings proof of service.
4. Upon receipt of Student's proof of service, the Office of Administrative Hearings shall schedule the mediation pursuant to Education Code, section 56500.3, subdivision (e).

Dated: April 12, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings