

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT AND PLACER
COUNTY MENTAL HEALTH.

OAH CASE NO. 2011061341

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 29, 2011, Parents on Behalf of Student (Student), filed a Due Process Hearing Request¹ (complaint) naming Roseville Joint Union High School District (District) and Placer County Mental Health (referred to in Student's complaint as "PCCSC." For consistency, that acronym will be used herein, as well).

On July 6, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint. Student did not file an opposition to District's NOI. PCCSC did not join in District's NOI.

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

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).

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 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.⁷

DISCUSSION

Student’s complaint raises three issues with multiple sub-issues. With respect to Issues 1 and 2, including the sub-issues, and Issue 3(a), Student has clearly identified a problem and provided sufficient facts forming the basis of those problems. Student’s Issues 1 and 2 in their entirety and 3(a) provide District and PCCSC with sufficient information to be able to prepare for hearing and participate in a resolution session and mediation. Accordingly, Issues 1, 2 and 3(a) are sufficiently pled.

With respect to Issue 3(b) Student alleges that District and PCCSC predetermined her placement during the 2010-2011 school year. Specifically, Student’s complaint, at paragraph number 49, alleges:

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

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).

Petitioner is informed and believes that and the District predetermined [Student's] placement outside of the [Individualized Education Program] IEP team process based upon the funding issues surrounding residential treatment and without considering [Student's] needs.

The issue of whether Student's IEP teams "predetermined" Student's placement outside of the IEP process lacks sufficient factual support. For example, Student fails to identify who allegedly made any "predetermined" decisions; fails to identify what specific "funding issues surrounding residential treatment" are being referred to; fails to specify when the alleged "predetermination" was made; and fails to specify which of Student's needs were not considered by the IEP teams because of the alleged "predetermination." Accordingly, Student's complaint is insufficiently pled in that it fails to provide District and PCCSC with the required notice of specific facts that would allow them to prepare for hearing, and participate in a resolution session and mediation. Accordingly, Issue 3(b) is insufficiently pled.

ORDER

1. Issues 1, 2, and 3(a) of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 3(b) 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).⁸
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.

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

4. If Student fails to file a timely amended complaint, the hearing shall proceed to hearing on Issues 1, 2 and 3(a) as set forth in the complaint.

Dated: July 7, 2011

/s/

GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings