

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011070225

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 6, 2011, Tania L. Whiteleather, Attorney for Student filed a Due Process Hearing Request¹ (complaint) naming the Chino Valley Unified School District (District).

On July 8, 2011, Joann Reilly, Administrator, West End SELPA filed a Notice of Insufficiency (NOI) on behalf of District 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 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 alleges four claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issue No. 1: “[w]hether the District has appropriately identified and addressed [Student’s] unique educational needs.” Student provides a narrative that begins in 2006, but contains information within two years of the complaint. Student has provided sufficient information for District to understand the issues forming the basis for the complaint. Issue No. 1 is sufficiently pled to put District on notice.

Issue No. 2: “[w]hether the District has addressed the continuum of services and identified a research-based program to address [Student’s] unique needs in reading.” Student has provided sufficient information for District to understand the issues forming the basis for the complaint. Issue No. 2 is sufficiently pled to put District on notice.

Issue No. 3: “[w]hether [Student’s] parents, in light of the District’s failure to provide FAPE to [Student], have provided him with appropriate educational services for which they

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).

should be reimbursed.” Here Student is requesting compensatory education in the event District has denied Student a FAPE. Although this claim is appropriate as a remedy, it is not an issue to be decided regarding a provision of FAPE to Student, however, the issue is sufficient

Issue No. 4: “[w]hether the District’s actions, in denying FAPE to [Student] and his parents, and in failing to address and meet [Student’s] unique educational needs, has denied [Student’s] and his parents’ rights under the American with Disabilities Education Act [ADA], Section 504 [Section 504 of the 1973 Rehabilitation Act], and the California Unruh Act [Unruh Act] and other State laws.” Student fails to provide sufficient allegations of how an alleged denial of FAPE under the IDEA violates Student’s rights under the ADA, Section 504, the Unruh Act or other state laws. Therefore, Issue No. 4 fails to provide sufficient information for District to prepare for hearing and to participate in a resolution session and mediation. Issue No. 4 is insufficiently pled.

Issues No. 1, No. 2 and No. 3 that is actually a remedy are sufficiently pled to put District on notice as to the basis of Student’s claims.

With regard to Issues No. 4, Student fails to allege facts sufficient for District to prepare for hearing and participate in a resolution session and mediation. Therefore, Student has failed to state sufficient facts supporting these claims, and the claims are insufficient.

Student’s proposed resolutions request seeks compensatory education and appropriate educational placement and services. A 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).) The proposed resolution stated in Student’s complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues No. 1, No. 2 and No. 4 of Student’s complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues No. 4 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).⁸

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

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 No. 1, No. 2 and No. 3 in Student's complaint.

Dated: July 14, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings