

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080062

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 1, 2011 Parents on behalf of Student (Student) filed a two page Due Process Hearing Request¹ (complaint) naming the Folsom Cordova Unified School District (District) as respondent. The complaint was in letter form and filed by advocate Lynne Castellucci.

On August 11, 2011, the District, through attorney Anne M. Sherlock, filed a response to the complaint. In one part, the District provided a prior written notice of its denial of Student's proposed resolution for reimbursement of the costs of Student being unilaterally placed in a nonpublic school (NPS). In the second part, the District responded to the allegations contained in the complaint with the caveat that "the issues are not clearly delineated." The District then responded to two issues: (1) that a placement included in a mediated settlement on March 17, 2011 was not being implemented, and (2) the District does not have an appropriate placement for Student.

On August 16, 2011, the District filed a Notice of Insufficiency of Complaint (NOI) in that the issues are not clearly pled so that the District can be able to respond and prepare its defense. Additionally, the District contends that Student failed to allege facts related to the issues to support the issues pled. The District claims that Student failed to allege how the District breached the settlement agreement, and how the placement offered was not appropriate or was a denial of Student's right to a free appropriate public education (FAPE). As to issue two, the District avers that Student failed to demonstrate how the placement offered is not appropriate to meet Student's unique needs.

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).

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 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

² 20 U.S.C. § 1415(b) & (c).

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).

DISCUSSION

Student's complaint fails to allege what specific problems, or issues, are being alleged other than the District breached a settlement agreement as to placement. Student also avers that "there are a number of other agreements in the mediation that have not been implemented," but Student's complaint omits any further discussion of this allegation. Student has failed to allege facts to support in what manner the District has violated the settlement agreement or how Student was denied a FAPE. Thus, Student has failed to adequately set forth the problems and allege sufficient facts to support claims in the complaint.

Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

Should Student opt to file an amended complaint, she should specifically allege the specific problems and supporting facts as discussed above.

ORDER

1. Student's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸
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.
5. All dates previously set in this matter are vacated.

Dated: August 17, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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