

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020130

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 03, 2012, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Val Verde Unified School District (District). Additionally, on February 6, 2012, Student filed a Request for Stay Put.

On February 9, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint, and in the alternative, a Motion to Dismiss Student's complaint. Further, on February 10, 2012, the District filed an Opposition to Student's Request for Stay Put.

Based upon the discussion below, Student's complaint is determined to be insufficient, thereby rendering Student's Request for Stay Put and the District's Motion to Dismiss, moot.

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 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

DISCUSSION

Student’s complaint alleges (1) that “Student needs an aide restored as before, and to remain in her present placement for the rest of the 2011-2012 school year”; and (2) the “District has threatened to revoke inter-district transfer unless (Parent) agrees to exit Student from special education”, which are both insufficiently pled.

Parent alleges that District policy grants inter-district transfers to parents who are employed within district boundaries. Student has provided no legal authority or legal connection of the District’s inter-district transfer policies to special education or the IDEA, in order to support a due process complaint under OAH jurisdiction.

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).

Additionally, Student has failed to identify her school district of residence (LEA), and the school district of the proposed transfer. Student has failed to identify which school district created Student's current or last agreed upon Individual Educational Plan (IEP). Student fails to specifically identify the terms of Student's IEP, including placement and support services, such as an aide. The complaint further fails to include sufficient information to indicate that the inter-district transfer is a part of the IEP or is necessary to provide Student a FAPE. Further, while Student concludes that her school performance has declined since her aide was removed, she has provided no factual allegations to support this claim or that it has resulted in the denial of FAPE.

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.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 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.

6. Student's Request for Stay Put is moot and is therefore denied without prejudice.

7. The District's Request for Dismissal of Student's Complaint is moot, and is therefore denied without prejudice.

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

8. A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁹ Parent is encouraged to contact OAH for assistance if she intends to amend her due process hearing request.

Dated: February 15, 2012

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

⁹ Ed. Code, § 56505.