

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MARIN COUNTY SPECIAL EDUCATION
LOCAL PLAN AREA.

OAH CASE NO. 2012020133

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 2, 2012, Mother, on behalf of Student filed a Due Process Hearing Request¹ (complaint) against the Marin County Special Education Local Plan Area (SELPA) with the Office of Administrative Hearings (OAH). On February 16, 2012, the SELPA filed a Notice of Insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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

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 The SELPA also challenged Mother's right to file the complaint on behalf of her daughter, who is over the age of 18, because the complaint did not show that either she has been appointed Student's conservator with power over her educational decisions, or that Student has transferred her education rights to Parent. (Ed. Code, § 56041.5.) Because the SELPA's NOI is granted, this issue need not be addressed at this time.

³ 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student’s complaint contains two issues for hearing regarding the “Marin County School District’s” alleged failure to provide her with sufficient academic instruction and classroom supervision. The complaint does not contain a formal proof of service or other indication as to which school district in Marin County Student’s educational advocate served with the complaint, as there is no school district in Marin County named “Marin County School District.” Additionally, the complaint does not contain any allegations that the SELPA provided Student with any special education services. It is unclear wither Student intended to name and serve a specific school district or the Marin County Office of Education. Accordingly, Student fails to allege sufficient facts because the complaint does not name an identifiable local education agency or contain allegations that the SELPA provided Student with any special education services, and therefore the complaint is insufficient.

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

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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. 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). If Mother files the complaint on behalf of Student, Mother shall include proof that she has been either appointed Student's conservator with power over her educational decisions, or that Student has transferred her educational rights to Mother, or that Student authorizes Mother to represent her interests in this matter.⁹

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: February 17, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.