

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040306

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 6, 2012, Parents, on behalf of Student, filed a Request for Due Process Hearing (complaint)¹ with the Office of Administrative Hearings (OAH), naming the Oceanside Unified School District (District). On April 19, 2012, the District timely filed a Notice of Insufficiency (NOI) 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, while containing several issues for hearing, all relate to whether the District will make an adequate offer of services and placement to Student. The complaint does not contain sufficient information because Student alleges facts about an individualized education program (IEP) team meeting that has not yet occurred and what services, goals and placement Parents want to be included in the IEP. If Student is not presently receiving adequate special education services, the complaint needs to include more information as to the IEP at issue and why that IEP fails to provide Student with FAPE. Additionally, Student can challenge the forthcoming IEP after the District has made a formal offer. Accordingly, Student’s complaint fails to allege sufficient facts and thus insufficiently pled.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parents request the assistance of a mediator, they should contact OAH immediately in writing.

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).

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: April 23, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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