

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

POMONA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012040408

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 11, 2012, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH) naming Pomona Unified School District (District). On April 17, 2012, District 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 alleges two claims, both of which are insufficiently pled. Student’s first claim is failure of the District to comply with its child find obligation by failing to assess her for suspected disabilities when she was a student in the District. Her second claim is that the District failed to provide complete school records when requested by her attorneys in the fall of 2011. As a result of these failures, Student was denied a FAPE.

In regards to the first claim, Student alleges on page three of the complaint that she enrolled in a District high school in September 2010, and the District should have been put on notice that she needed assessment because she failed many of her classes during ninth and tenth grades. According to the complaint, Student transferred from the District to another school District in November 2011, and one month after entering the new school district, that district assessed her, and she was found eligible for special education in February 2012 due to a specific learning disability. Student contends that the District provided no attendance or discipline records for the 2010-2011 (SY), which might have explained the reason for her poor grades that school year. Student also alleges that during the 2011-2012 SY, from the

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).

beginning of the school year to November 2011 when she transferred out of the District, she “had only 14 unexcused absences which was not an unusual number.”

There are several difficulties with the complaint, in regards to the sufficiency of the first issue. First, although Student claims on page three of her complaint that she enrolled in a District high school on September 8, 2010, there is no indication as to what grade she was actually in when she enrolled. However, on page six of the complaint, there is an allegation that she enrolled in a District middle school in February 2011. Further, in reporting Student’s grades on page four of the complaint there is a chart concerning Student’s grades in ninth and tenth grades that reflect grades for both the first and second semester, but how Student could have attended both semesters of those grades when she was only enrolled in the District from September 2010 to November 2011, is unexplained, unless the ninth grade marks were given in yet another school district prior to enrollment in the District. In the complaint, there is also an indication that the new school district’s individualized education program reflected that Student received “pre-referral early intervening services” in District, but no indication as to what these services were, or when she allegedly received them.

Other than Student’s purported poor grades and the fact that another school district subsequently assessed her as eligible for special education, and she received some sort of intervention services in the District at some undisclosed time, there are no other facts to provide the District with sufficient notice to enable it to defend against this claim. This is compounded by the uncertainty created by the confusing dates and schools of attendance on the third and sixth pages of the complaint. Accordingly, Student’s complaint as to the first issue 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.

With respect to the second issue which alleged a failure of the District to provide complete records to Student when requested in the fall of 2011, it is stated that those records were requested from the high school that Student says she attended from September 2010 to November 2011, on page three of the complaint. However, the information in another part of the complaint that she may have also attended a middle school in the District during the same period of time confuses this issue, and renders the claim insufficient.

The District challenges several resolutions proposed by Student because it cannot determine why these resolutions are relevant as to the claims previously made by Student. 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).) In this regard, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time, but because some of the proposed resolutions are not clearly related to the minimal facts stated in other sections of the complaints, they create further lack of clarity as to the issues.

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.

Dated: April 19, 2012

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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