

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL DISTRICT, POMONA UNIFIED SCHOOL DISTRICT, NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT, AND LOS ANGELES COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2012060908

ORDER DETERMINING DUE PROCESS COMPLAINT TO BE INSUFFICIENTLY PLED

On June 15, 2012, Student, through his Father (herein jointly referred to as Student) filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH) naming the Glendale Unified School District (Glendale), the Pomona Unified School District (Pomona), the Norwalk-Mirada Unified School District (Norwalk) and the Los Angeles County Office of Education (LACOE).

On June 26, 2012, Glendale and Pomona timely filed a joint 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

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 In their NOI, Glendale and Pomona indicate that they were not served with a copy of Student's complaint until June 22, 2012. However, whether based upon the date Student filed his complaint with OAH or the date Glendale and Pomona received a copy of it, their NOI is timely.

³ 20 U.S.C. § 1415(b) & (c).

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.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 IDEA 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 alleges five claims, which are all insufficiently pled. The gist of Student’s issues is that Glendale disenrolled him from school on June 15, 2012. Student alleges that he has been attending a non-public school. He states that he lives in Pomona, that his mother lives in Glendale, and that his father, who is his conservator, has no

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).

permanent residence but is presently living in Norwalk. Student basically appears to be requesting OAH to determine which school district is responsible for his education.

The problem with Student's complaint, as Glendale and Pomona point out in their NOI, is that Student provides no facts regarding whether he is a student eligible for special education and related services or the basis of that eligibility. Student does not state whether he presently has an individualized education plan (IEP), and, if so, when his most recent IEP was signed, what the provisions of the IEP are, what Student's placement is and what services he is supposed to receive, and which, if any, he is not receiving. Importantly, Student does not allege how any of the school districts have violated his right to a free appropriate public education. Student states that he resides in Pomona, but gives no information as to why he is living there if his mother lives in Glendale and his father, who Student states is his conservator, presently lives in Norwalk. Nor does Student state for how long he has lived in Pomona, and where he lived prior to that. Student states that he had been attending a non-public school, but does not indicate whether he was placed there through the IEP process, if Glendale was the school which placed him there, and what the dates of his attendance are. While it would be possible to infer information from the complaint, the respondents are not required to do so under the law, as explained above. Presently, the complaint does not provide enough information to the named school districts to permit them to participate fully in a resolution session⁹ or to defend against the allegations at hearing.

For these reasons, Student's complaint is insufficiently pled in that it fails to provide the school districts with the required notice of a description of the problem and the facts relating to the problem.

Additionally, Student fails to state specific proposed resolutions to the issues he raises. 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).) Student must specify the remedies he wishes OAH to order should he prevail on the allegations in his complaint.

As a point of information for Student's father, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.¹⁰ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. Student's father may either write to OAH in Sacramento or call OAH at (916) 263-0880 to request this assistance.

⁹ Student's complaint requests a hearing only. Therefore, no mediation has been scheduled in this case.

¹⁰ Ed. Code, § 56505.

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).¹¹
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. If Student's father wishes assistance with writing an amended complaint, he may contact OAH as indicated above.

Dated: June 27, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

¹¹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.