BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GUARDIAN ON BEHALF OF STUDENT, v. RIVERSIDE COUNTY OFFICE OF EDUCATION; SUPERINTENDENT KENNETH YOUNG; RIVERSIDE UNIFIED SCHOOL DISTRICT; SUPERINTENDENT RICH MILLER; RIVERSIDE COUNTY MENTAL HEALTH; and DOES 1 through 20.	OAH CASE NO. 2013040771 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO RIVERSIDE COUNTY OFFICE OF EDUCATION AND SUPERINTENDENT KENNETH YOUNG

On April 16, 2013, Guardian on behalf of Student (collectively, Student) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH) naming the Riverside County Office of Education (RCOE); Kenneth Young, Superintendent; the Riverside Unified School District (RUSD); Rich Miller, Superintendent; and Riverside County Mental Health (RCMH).

On May 1, 2013, RCOE and Superintendent Kenneth Young 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.[1] 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] 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.[2] 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.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

Student's complaint alleges five issues. The first four claims are made against the named local educational agencies, including RCOE. The last claim is made against solely against the two Superintendents named as individually liable for violating Student's civil rights under 42 United States Code section 1983. As discussed below, only issues two and three, are sufficiently pled against RCOE and/or Superintendent Kenneth Young.

In issue one, Student alleges that RCOE failed to provide him and/or his legal counsel with copies of his educational records. However, Student fails to state when he requested the records, which records were requested, to whom he made the request, and which records RCOE failed to provide him. Student also fails to state how he was denied a free appropriate public education (FAPE) by the failure of RCOE to provide him with the records in question. For this reason, issue one is insufficiently pled as to RCOE.

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[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *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.].

[6] 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).

In issues two and three, Student contends that between April 16, 2011, and April 16, 2013, when Student filed the instant due process complaint, RCOE failed to comply with the procedural and substantive requirements of the Individuals with Disabilities Education Act (IDEA) and state law. Although Student complaint is confusing as to which school district he alleges was responsible for his education subsequent to May 1, 2011, when Student was placed in juvenile hall, Student does provide allegations specifically against RCOE. It is clear that Student alleges that he was in juvenile hall subsequent to May 1, 2011, and that RCOE was responsible for his education after that date. Student's allegations as to the reasons why he believes that RCOE violated his procedural and substantive rights under the IDEA are specific enough to withstand RCOE's notice of insufficiency. Student states that RCOE failed to appropriately assess him in the areas of behavior, mental health, social-emotional, speech and language and academics. He alleges that the assessments RCOE did conduct of him were not administered by properly trained individuals. Student further alleges that RCOE failed to follow correct procedures in eight other areas. Student contends that the 10 alleged procedural violations committed by RCOE gave rise to a substantive denial of a FAPE to him. These allegations are specific enough to put RCOE on notice of the procedural and substantive violations Student alleges RCOE committed during the applicable time period. Issues two and three are therefore sufficiently pled as to RCOE.

In issue four, Student alleges that RCOE violated his rights under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and state civil rights laws. The jurisdiction of OAH to consider the allegations of issue four will be addressed in a separate order. However, as the undersigned Administrative Law Judge has found that issues two and three are sufficiently pled as to RCOE, since issue four is derivative of those allegations, it is sufficiently pled as to RCOE as well.

In issue five, Student contends that RCOE Superintendent Kenneth Young violated Student's rights under 42 United States Code section 1983. However, other than alleging general that Mr. Young had supervisory responsibility for RUSD, Student makes no allegation that Mr. Miller was directly involved in any issues involving Student. In fact, Student makes no statement as to how Mr. Miller may have been involved in Student's education or when or how he was even informed of issues concerning Student. Issue five is therefore insufficiently pled as to Superintendent Miller. The jurisdiction of OAH to hear this issue will be addressed in a separate order.

Student's complaint is therefore insufficiently pled at to RCOE with regard to issue one, and is insufficiently pled as to Superintendent Young.

ORDER

1. Issues two, three, and four, are sufficiently pled as to RCOE under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue one is insufficiently pled as to RCOE and issue five is insufficiently pled as to Superintendent Young under Title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[7]

4. 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.

5. In a separate Order, OAH has found Student's complaint to be sufficiently pled as to RCMH. If Student fails to file a timely amended complaint as to RCOE, the hearing shall proceed only on issues two, three, and four, as to RCOE, and shall proceed on issues one, two, three, and four as to RCMH.

Dated: May 06, 2013

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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