

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012120447

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING
DISTRICT'S MOTION TO DISMISS

On December 12, 2012 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH), naming Stockton Unified School District (District).

On January 2, 2013, District filed a Notice of Insufficiency (NOI) and Motion to Dismiss, as to Student's complaint. On January 3, 2013, District's counsel, attorney S. Diane Beall, filed her declaration, demonstrating that the NOI had been timely served and filed with OAH on December 21, 2012, but had not been received due to a an error with the facsimile.

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

NOI Timely Filed

Student filed his complaint with OAH via facsimile on December 12, 2012. Student did not include a proof of service upon District. Fifteen days from December 12, 2012, was December 27, 2012.

District did not file its NOI until January 2, 2012, which was 22 days after Student’s faxed service and filing of the complaint with OAH. However, District’s attorney Ms. Beall states in her declaration that she personally served the NOI by mail on December 21, 2012.

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).

Additionally, she convincingly establishes that she personally faxed the NOI to OAH at its faxination phone number, and received a fax receipt which confirmed the pleading was received. (A copy of the December 21, 2012 transmission verification was attached to the NOI.) When Ms. Beall noted there had not been a ruling, her offices checked with OAH, which did not have record of the NOI. Ms. Beall therefore had the NOI and motion to dismiss faxed again, on January 2, 2013, and followed with her declaration of January 3, 2013.

District has demonstrated that its NOI was timely filed, in accordance with California and federal statutes. OAH therefore rules upon the NOI's merits.

Student's Complaint is Insufficient

Student's form complaint is five (5) pages, with one exhibit. The complaint lists six (6) issues. All are insufficiently pled as discussed below.

Issue One asserts that the last signed IEP stated Student's needs were more intensive and that he needed a non-public school (NPS) placement, but that District refused to follow the last signed IEP. Student proposed resolution is that the District be required to follow the law. Issue One does not provide any dates nor does it identify the IEP to which it refers. Though the issue asserts that Student's needs are "more intensive," Student does not identify the needs nor assert the nature of the intensity which would require an NPS. District has insufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation of this issue. Issue One is insufficient.

Issue Two states that Student was able to put a poisonous mushroom in his mouth on September 24, 2012, which could have resulted in possible death. Student fails to assert any facts as to how this incident is related to the District's failure to provide special education placement or services. Issue Two does not enunciate an issue, but instead asserts facts without stating how they amount to a problem regarding the provision of a free and appropriate public education (FAPE) for Student. Issue Two is insufficient because it fails to provide District an awareness and understanding of the basis of the issue's complaint.

Issue Three states the IEP team is "playing hardball, absolutely refusing to place [Student] at another school site, saying they will not put his any place else, . . . (sic.)" Student does not identify any IEP team meetings, does not provide dates regarding the alleged conduct, and further fails to allege facts relevant to Student's need to be placed elsewhere. Issue Three is insufficient because it fails to provide District an awareness and understanding of the basis of the issue's complaint.

Issues Four and Five make the same factual assertion that Student has been out of school since September 24, 2012, because Student's mother refuses to send him back to a school in which he was improperly supervised, and that District refuses to place Student at another site. Issues Four and Five do not state how the facts cause a problem regarding the provision of a FAPE for Student. Though Issues Four and Five may be asserting that Student

is not in school because District has not made an appropriate offer of placement, the issues do not provide dates, do not refer to any IEP, do not state the District's offer of placement, and do not clarify why the District's placement is inadequate. Issues Four and Five are insufficient because they fail to provide District an awareness and understanding of the basis of the issues' complaints.

Issue Six states that the IEP team is hostile and complicated to work with. This allegation may be trying to assert that the parent's right to participate as an IEP member, in developing the IEP, has been denied and that such denial has resulted in a loss of FAPE to Student. However, the issue is too vague. Issue Six is merely a characterization, with no dates or other facts which would sufficiently provide District with an awareness and understanding of the basis for the issue's complaint. Issue Six is insufficient.

In addition to asserting that the issues are insufficient, District also requests that various issues be dismissed as being outside the jurisdiction of OAH. However, though the issues are insufficiently stated, the issues are not clearly outside the jurisdiction of OAH, such as a civil rights claim. Therefore, District's motion to dismiss is denied.

Mediator Assistance for an Unrepresented Party

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.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. The District's notice of insufficiency was timely filed, under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. Issues One through Six, of Student's complaint, are insufficiently pled under section Title 20 United States Code 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).¹⁰

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.

⁹ Ed. Code, § 56505.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the complaint will be dismissed.

6. All dates previously set in this matter are vacated.

Dated: January 04, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings