

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

POMONA UNIFIED SCHOOL DISTRICT,
WALNUT VALLEY UNIFIED SCHOOL
DISTRICT, AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2013090776

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT AS TO LACOE

On September 23, 2013 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Pomona Unified School District (Pomona USD), Walnut Valley Unified School District (Walnut Valley USD), and Los Angeles County Office of Education (LACOE).

On October 1, 2013, LACOE 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

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).

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.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 IDEA 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 one claim, which is insufficiently pled as to respondent LACOE. Student’s complaint states that there is a dispute on an interdistrict transfer because Pomona USD was not willing to cover the cost of Student’s special education needs. The complaint further states that Student is not currently attending school because of the dispute between Pomona USD and Walnut Valley USD over the interdistrict permit.

The complaint raises no allegations indicating how or in what manner LACOE is involved in denying Student a free appropriate public education (FAPE) or the interdistrict transfer permit. LACOE is not mentioned at all in the body of the complaint. The only mention of LACOE is in an attachment addressed “To Whom it May Concern” and then simply that there are requirements to be met when an appeal is submitted to LACOE.

Accordingly, Student’s complaint is insufficiently pled in that it fails to provide LACOE with the required notice of a description of the problem and the facts relating to 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).

problem. Other than naming LACOE as a respondent, Student makes no allegations against LACOE and has, therefore, failed to provide sufficient information to enable LACOE to prepare for the hearing and participate in resolution sessions and mediation.

MEDIATOR ASSISTANCE AVAILABLE

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. As to respondent Los Angeles County Office of Education (LACOE), 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).⁹

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. The presently scheduled mediation, prehearing conference, and hearing shall remain as calendared, unless Student timely files an amended complaint, which 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 as to LACOE.

Dated: October 01, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

⁸ Ed. Code, § 56505.

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

