

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014050014

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT; ORDER GRANTING
MOTION TO DISMISS ISSUE TWO

On April 29, 2014, Student's parents on behalf of Student filed a due process hearing request¹ (complaint) naming the Temecula Valley Unified School District.

On May 2, 2014, the district filed a notice of insufficiency (NOI) as to Student's complaint. On the same date, the district filed a motion to dismiss issue two of the complaint on the basis that it raises claims outside the jurisdiction of the Office of Administrative Hearings in a special education due process case. On May 6, 2014, Student filed responses to the NOI and the motion to dismiss.

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

The allegations in Student’s complaint are not sufficient to put the district on notice of the issues forming the basis of the complaint. Student alleges only two issues. The first is a very general allegation that Student’s placement, program and services did not meet her needs. There are a myriad of facts in the document that might relate to issues involving a violation of procedures, failure to implement Student’s educational program, or failure to place Student in the least restrictive environment, but Student does not specifically allege any issues related to those facts. The district is not required to guess which, if any, of those factual allegations Student intends to raise as issues at hearing.

In Student’s response to the NOI, Student attaches a copy of a complaint filed by a school district in a different case. Apparently in that case, the school district raised the issue of whether its offer for a particular school placement was appropriate. Student argues that, if a school district can allege a single issue that its proposed placement offered a FAPE, then Student can also allege a single issue that Student was denied a FAPE.

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).

Student's position is not well taken. In the instant case, Student does not allege a specific issue such as the appropriateness of a particular placement. Instead, Student alleges a very general issue which may or may not involve some or all of the many factual allegations in the complaint. Student needs to allege specific *issues* for hearing, not just a general, "catch-all provision" without specificity.

Student's second issue arises under Section 504 of the Rehabilitation Act, and is outside the jurisdiction of OAH in a special education due process proceeding. It must be dismissed. Student does not oppose dismissal of the second issue.

ORDER

1. Student's issue one of the complaint is insufficiently pled under section Title 20 United States Code section 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.
6. Student's issue two is outside the jurisdiction of OAH and is hereby dismissed.

DATE: May 6, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

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