

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014041115

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 21, 2014, Student's parent on behalf of Student (Student) filed a due process hearing request¹ (complaint) naming the Twin Rivers Unified School District.

On May 8, 2014, Twin Rivers filed a notice of insufficiency (NOI) as to Student's complaint. According to the NOI papers, Twin Rivers received Student's complaint on April 23, 2014.

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 requirements prevent vague and confusing complaints, and promote fairness by providing the

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).

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 Individuals with Disabilities Education Act (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 14 issues, some of which are sufficient and some of which are insufficient. The issues are discussed below.

Issue one alleges that Twin Rivers failed to notify Student’s parent that behavioral observations were being conducted in class. Issue two alleges that Twin Rivers failed to hold an IEP meeting when Student was having challenges in class. Issue three alleges that Twin Rivers failed to conduct a functional analysis assessment. The three issues do not allege any time period when the events occurred. They do not provide Twin Rivers with sufficient notice to prepare a defense.

Issue four alleges a denial of a FAPE based on numerous calls from a staff member asking that Student’s parent pick up Student early. It is not clear when the conduct occurred or why Student’s parent contends that the conduct gave rise to a denial of FAPE. That issue is not sufficient.

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).

Issue five appears to allege a violation of Section 504 of the Rehabilitation Act. If that is the case, the issue is not one that can be decided before the Office of Administrative Hearings (OAH) in a special education due process proceeding. OAH does not have jurisdiction over Section 504 claims.

Issues six and seven involve an incident in which Student was left on a bus while Student's parent was notified to pick up Student. It is not clear in what way these facts relate to a denial of FAPE.

Issue eight alleges that Twin Rivers changed Student's placement without following proper procedures. Issue nine alleges that Twin Rivers should have reevaluated Student before changing his placement. Although these issues could be more specifically alleged, they relate to a specific event on a specific date. They are sufficient to put the district on notice as to the basis for the complaint.

Issue 10 alleges that Twin Rivers staff had a discussion with Student's doctor (with parental consent) about medication. It is not clear from the issue how such a discussion gave rise to a denial of FAPE.

Issue 11 appears to object to lack of notice to the parent about observations. However, the proposed remedy asks for the parent to be given copies of reports. Therefore, the issue is not clear and should be clarified.

Issues 12 and 13 recount telephone conversations between Student's parent and district staff members. It is not clear why Student's parent believes these conversations led to a denial of FAPE.

Issue 14 alleges that Student was not provided with aid from a paraprofessional in the classroom. Although the issue could be more specifically alleged, it is sufficient to put the district on notice as the basis for the complaint.

In summary, issues 8, 9, and 14 are sufficiently pled to put Twin Rivers on notice as to the basis of Student's claims. The remaining issues are not sufficient and will require amendment and further clarification before they can go forward to hearing.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

⁸ Ed. Code, § 56505.

ORDER

1. Issues 8, 9, and 14, of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. The remaining issues of Student's complaint are insufficiently pled 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).⁹
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. If Student fails to file a timely amended complaint, the hearing shall proceed only on issues 8, 9, and 14 in Student's complaint.

DATE: May 8, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

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