

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014050960

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 21, 2014, Father, on behalf of Student, filed concurrently an expedited Due Process Hearing Request (expedited complaint) and a non-expedited Due Process Hearing Request¹ (non-expedited complaint) with the Office of Administrative Hearings naming the Lodi Unified School District.² On June 3, 2014, District 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.³ 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.⁴ 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 On May 21, 2014, Mother and Father jointly filed a separate expedited and non-expedited complaint against the District with separate factual allegations. (OAH Case No. 2014051150.) Both matters are set for hearing on the same days.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 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.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 Individuals with Disabilities Education Act 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 Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student’s conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested, and for a decision to be rendered within 10 school days of the conclusion of the hearing. With respect to expedited hearing requests, there is no provision similar to that in title 20 United States Code section 1415(c)(2)(A), allowing for the testing of the sufficiency of an expedited hearing request.

DISCUSSION

Student’s complaint contains six issues for hearing, with Issues 1, 2, and 4 containing both expedited and non-expedited allegations, and Issues 3, 5, and 6 non-expedited issues for

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).

⁹ 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).

hearing. As to the non-expedited portion of Issue 1, Student alleges sufficient facts that District unilaterally changed her educational program without holding an individualized education program team meeting. Accordingly, Issue 1 is sufficiently pled.

As to Issues 2 and 3, the complaint contains sufficient factual allegations that District falsified information in Student's educational records to prevent Parents from meaningfully participating in her educational decision making process.

Regarding Issue 4, Student alleges sufficient facts that District failed to give Parents a copy of the manifestation determination meeting documentation. Issue 5 does not contain adequate facts because the complaint does not allege when the principal unilaterally extended Student's suspension. Finally as to Issue 6, Student just states that a fraud has been committed, which is not by itself an issue for hearing.

As to the expedited portions of Issues 1 and 2, Student alleges that the District failed to implement Student's last IEP and failed to consider information at the manifestation determination meeting that the disciplinary conduct was a manifestation of her disability. The expedited portion of Issue 4 alleges that the manifestation meeting was not properly noticed. Because an NOI is not available in expedited hearing requests, the District's NOI as to the expedited portions of Issues 1, 2, and 4 is denied.

Regarding the non-expedited portions of Issues 1 and 2, Student requests that District change her educational placement and assess her. For Issue 3, Student requests that District personnel get training on special education laws, and for the non-expedited portion of Issue 4 for Parents to get a copy of the manifestation determination meeting notes. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(IV).) The proposed resolutions in Issues 1 through 4 as stated in Student's complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

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.¹⁰ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. The District's NOI as to expedited portions of Issues 1, 2, and 4 is denied because these issues are an expedited complaint.

¹⁰ Ed. Code, § 56505.

2. Issues 1, 2, 3, and 4 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

3. Issues 5 and 6 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

4. Student shall be permitted to file an amended complaint as to the non-expedited issues under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹¹

5. The amended non-expedited 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.

6. If Student fails to file a timely amended non-expedited complaint, the non-expedited hearing shall proceed only on Issues 1, 2, 3, and 4 in Student's complaint.

DATE: June 4, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹¹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.