

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2014041107

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 22, 2014, Student filed a due process hearing request¹ (complaint) naming Riverside County Office of Education (RCOE) and County of Riverside Probation Department (Probation Department).

By Office of Administrative Hearings (OAH) order, dated May 12, Student' complaint was determined to be insufficiently pleaded against Probation Department. Student was granted leave to amend.

On June 27, 2014, Student filed a timely amended complaint.

On July 7, 2014, Probation timely filed a notice of insufficiency (NOI) as to Student's amended 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

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).

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 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 amended complaint alleges three issues: (1) that he was denied a free appropriate public education by RCOE because RCOE did not act, or did not act timely, to provide Student with independent educational evaluations requested in April and May 2013, (2) that RCOE and/or Probation Department denied Student his “right to complete independent educational evaluation] assessments” because Student’s assessors have not been allowed into the juvenile detention facilities where Student resided to observe Student’s educational program, and (3) that the conduct of RCOE and Probation Department denied Student his rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)), the Americans with Disabilities Act (42 U.S.C. 12101 et seq. (ADA)), and related federal and California civil rights laws. As remedies, Student seeks to have RCOE or Probation Department ordered to pay for the evaluations, pay for his assessors’

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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).

testimony in a prior due process proceeding, and allow Student's assessors free access to Student in the juvenile detention facilities.

The facts alleged in Student's amended complaint are sufficient to put Probation Department on notice of the issues forming the basis of the complaint. The complaint has described a problem relating to the evaluation, educational placement or provision of FAPE to Student, facts related to that problem, and a proposed resolution of the problem. Probation Department argues that it has no responsibility for Student's educational program, but an NOI looks to whether the notice requirements have been met, and not to the merits of the claim. Student's amended complaint identifies the issues and adequate related facts about the problem to permit Probation Department to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of the claim against Probation Department in Issue 2 is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: July 10, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings