

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NOVATO UNIFIED SCHOOL DISTRICT,
REED UNION SCHOOL DISTRICT, AND
LARKSPUR-CORTE MADERA SCHOOL
DISTRICT.

OAH CASE NO. 2014090047

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING,
WITHOUT PREJUDICE, LARKSPUR-
CORTE MADERA'S MOTION TO
DISMISS STUDENT'S SECOND ISSUE
REGARDING REIMBURSEMENT

On August 27, 2014 Student filed a Due Process Hearing Request¹ (complaint) naming Novato Unified School District, Reed Union School District, and Larkspur-Corte Madera School District.

On September 5, 2014, Larkspur-Corte Madera filed a Notice of Insufficiency (NOI) as to Student's complaint, contending that Student's complaint did not give Larkspur-Corte Madera fair notice of the issues to be adjudicated. Larkspur-Corte Madera also requested an order dismissing Student's second issue, whether Student was entitled to reimbursement of certain fees and costs, on grounds that the second issue stated a proposed remedy, not a claim.

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

The facts alleged in Student’s complaint are sufficient to put Larkspur-Corte Madera on notice of the issues forming the basis of the complaint. Student alleges that Larkspur-Corte Madera assessed Student in spring 2013 and, based on the assessment, concluded that Student did not meet the legal criteria for eligibility for special education under the category of specific learning disability. When Parents requested an independent educational examination, Larkspur-Corte Madera declined to pay for such an evaluation and directed Student to respondent Reed Union School District. Reed Union School District assessed Student and also concluded that Student did not qualify for special education under the eligibility category of specific learning disability. Parents disagreed with the districts’ conclusions, obtained an independent neuropsychological assessment, and enrolled Student in the Sterne School in San Francisco. Student contends that the districts’ assessments were

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).

untimely and inadequate and breached the districts' child find obligations under state and federal law.

Student's complaint identifies the issues and adequate related facts about the problem to permit Larkspur-Corte Madera to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of her claims is sufficient as to Larkspur-Corte Madera.

As a proposed resolution, Student seeks a determination that Student is eligible for special education under the category of specific learning disability and requires full-time special education and instruction and related services at an appropriate pupil to teacher ratio such as that offered by the Sterne School, and reimbursement for the costs of the private assessment that Parents obtained, the costs of Student's placement at the Sterne School, and legal costs. 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 resolution stated in Student's complaint is sufficiently defined to meet the statutorily required standard of stating a resolution to the extent known and available to her at the time.

Finally, although Student's proposed resolution of reimbursement of certain expenses is stated in the complaint as both an issue and a remedy, because there is no danger of confusing the proposed remedy with a substantive claim, it is in the interests of judicial economy to clarify this point at the time of the prehearing conference in this matter, rather than to delay ruling on the notice of insufficiency to allow Student time to respond to the motion to dismiss. Larkspur-Corte Madera's motion to dismiss is therefore denied at this time, without prejudice, and may be raised at the prehearing conference.

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.

3. Larkspur-Corte-Madera's motion to dismiss Student's second issue, whether Student was entitled to reimbursement of certain fees and costs, is denied without prejudice and may be raised at the prehearing conference in this matter.

DATE: September 09, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings

