

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2014101002

ORDER GRANTING NOTICE OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT IN PART, WITH LEAVE
TO AMEND

On October 23, 2014 Student's mother (Parent) filed on behalf of Student a Due Process Hearing Request¹ naming San Ramon Valley Unified School District, concurrently with a motion for stay put, which OAH denied on November 4, 2014. On October 31, 2014, District filed a single document titled "Notice of Representation; Notice of Insufficiency or in the alternative Motion to Dismiss Complaint; Opposition to Motion for Stay Put." On November 5, 2014, OAH issued an order granting District's notice of insufficiency, giving Student leave to file an amended complaint.

Also on November 5, 2014, prior to issuance of OAH's order granting District's notice of insufficiency, Student filed a second complaint (complaint) in this matter naming District, and a separate motion for stay put, which OAH denied on November 18, 2014. On November 18, 2014, District filed a notice of representation, and a timely notice of insufficiency 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.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).

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).

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 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 complaint alleges four claims. As discussed below, claims 1-3 are sufficient, and claim 4 is insufficient.

Student alleges that, at the time of the complaint, he was 10 years, 11 months old, was autistic and had a mental disability, and was placed by Regional Center of East Bay in a group home within District’s boundaries in 2010. Student had a District IEP, and was in the fifth grade at District’s Bollinger Canyon Elementary School.

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).

In May 2014, Student was allegedly physically abused in his group home, leaving him with bruises that staff at Bollinger noticed and reported. The abuse was alleged to be the subject of an ongoing investigation by an unidentified entity or entities. Parent requested an emergency IEP on May 29, 2014 for an unstated purpose, but District did not convene an IEP. On October 16, 2014, Student was allegedly improperly evicted from his group home because of the investigation. Student alleges that the group home failed to give him required 30 days' notice before evicting him. Student then temporarily moved in with Parent, who resided outside the District's boundaries. Student intends to return to the group home when his safety is ensured and problems at the group home are resolved by the Regional Center. At the time of the complaint, Parent was working with Regional Center to address Student's living situation.

Student alleges that District informed Parent that Student will no longer be permitted to attend Bollinger because Student no longer resides in the District. Student contended that he would regress if his program is changed abruptly, and he sought continued placement at Bollinger through the end of the 2014-2015 school year.

Student's complaint identifies the following four problems for resolution:

Problem 1 alleges that that District denied Student a FAPE by refusing to permit Student to continue in his current program at Bollinger, because he is only temporarily residing outside District's boundaries, and because the abrupt change of Student's program will cause him to regress. Student seeks an order directing District to allow Student to remain in his current program through the end of the 2014-2015 school year. Student's separate motion for stay-put was denied because Student did not attach a copy of Student's last agreed upon and implemented IEP, supported by a declaration under penalty of perjury establishing the necessary facts to support an order requiring District to continue providing Student special education and related services when he is not living within District's boundaries. However, a notice of insufficiency is not a summary judgment motion or motion to dismiss, and does not involve a determination of undisputed facts, or whether the facts alleged, if accepted as correct, would be sufficient to support a claim under the IDEA. Student's Problem 1 sufficiently identifies the issue and adequate related facts to permit District to respond to the complaint and prepare for and participate in a resolution session, mediation, and due process hearing, and is therefore sufficient.

Problem 2 alleges that District denied Student a FAPE by failing to hold an IEP and obtain Parent's consent prior to changing Student's placement by refusing to allow him to continue attending Bollinger. Student requests an IEP to discuss Student's placement. Student's Problem 2 sufficiently identifies the issue and adequate related facts to permit District to respond, and is therefore sufficient.

Problem 3 alleges that District denied Student a FAPE by failing to hold an emergency IEP when Parent requested one on May 29, 2014 after Student was physically abused, or in August 2014 prior to the start of the 2014-2015 school year. Parents have a right to request an IEP when they believe their child's IEP should be changed, and Student's

Problem 2 sufficiently identifies the issue and adequate related facts to permit District to respond, and is therefore sufficient.

Problem 4 alleges that District denied Student a FAPE by failing to provide copies of an investigation of an unspecified nature conducted by an individual identified by name, only. Student requests copies of the investigation and “copies of the finds from HR investigation.” Student alleges no facts indicating when the investigation took place, who or what was being investigated, how the investigation related to District’s evaluation, educational placement, or provision of FAPE with respect to Student, how District came to be in possession of the investigation or in a position to deliver copies to Parent, when Parent requested copies of the investigation, or how the “HR investigation” sought as part of Student’s request for relief relates to the investigation at issue and to District’s evaluation, educational placement, or provision of FAPE with respect to Student. Problem 4 therefore does not sufficiently identify the issue and adequate related facts to permit District to respond, and is insufficient.

Student shall have leave to amend the complaint as to Problem 4 to state sufficient facts, as outlined above, to put District on notice of the nature of the investigation at issue and how the investigation, and the “HR investigation,” related to District’s evaluation, educational placement, or provision of FAPE with respect to Student.

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

ORDER

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

⁸ Ed. Code, § 56505.

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

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 1, 2 and 3 in Student's complaint.

DATE: November 19, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings