

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

HESPERIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090391

ORDER DETERMINING DUE PROCESS

COMPLAINT TO BE SUFFICIENT

SEPTEMBER 20, 2021

On September 13, 2021, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Hesperia Unified School District. On September 16, 2021, Hesperia timely filed a notice of insufficiency.

The named parties have the right to challenge the complaint's sufficiency. (20 U.S.C. § 1415(b) & (c).) 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).

SERVICE OF COMPLAINT

Hesperia asserts that Student's complaint should not be considered because of improper service by email. Service of documents in special education due process proceedings is governed by the California Code of Regulations, title 5, section 3083, which states that service of notice, motions, or other writings pertaining to special education due process hearing procedures shall be delivered personally or sent by mail or other means to the party's attorney or other authorized representative. Unless otherwise specified, the form of mail, service or notice by mail may be by first-class mail, by registered or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender. There is no specific provision or regulation authorizing service of documents solely by email.

Although not specifically applicable to special education due process proceedings, Code of Civil Procedure section 1010.6 states, in pertinent part, that electronic service of documents is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action, or the court has ordered electronic service.

In this matter, Hesperia had not agreed to service of the complaint by email. However, Hesperia waived any such argument by filing a notice of representation through legal counsel and filing a notice of insufficiency, which were served upon Student by email. Hesperia Unified received sufficient notice of the contents of the complaint.

SUFFICIENCY OF COMPLAINT

A complaint is sufficient if it: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides an awareness and understanding of the issues forming the basis of the complaint. (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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, and whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. Of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

Hesperia contends that the complaint is a form complaint and does not sufficiently identify the alleged problems. The form nature of the complaint is not relevant. The question is whether Student's complaint meets the statutory requirements of sufficient notice to Hesperia.

Student's complaint alleges Student was eligible for special education as a child with a specific learning disability and a speech and language impairment. Student

asserts that Hesperia denied Student a free appropriate public education by failing to implement Student's November 20, 2019 and April 22, 2021 individualized education programs, during the COVID-19 pandemic, because Hesperia:

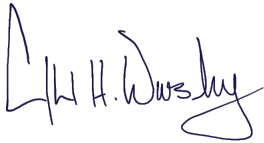
1. Substantially and materially altered the location of where the Student was to receive services, from a school classroom to the most restrictive setting of Student's home;
2. Substantially and materially altered the delivery of these services by precluding the Student from receiving in-person services by a special education teacher or related service providers, including any supplemental support as documented in the Student's IEP;
3. Improperly modified Student's IEP by remotely providing the academic and related services, including speech and language and transition services, which were to be delivered in-person at a school setting; and
4. Implementing the substantial and material alterations of Student's IEP and mandated services without proper notice to, or consent by, the Parent.

Student seeks an order that his IEPs be implemented as written, and that Parent be reimbursed for educationally related costs to provide an appropriate program for Student when Hesperia did not.

Student's complaint identifies the issues and asserts adequate facts about the problem to permit Hesperia to respond and participate in a resolution session and mediation. Therefore, Student's statement of the claims 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.

A handwritten signature in blue ink, appearing to read "Clifford H. Woosley". The signature is stylized with a large initial "C" and "W".

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings