

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA SCHOOL FOR THE DEAF, RIVERSIDE.

OAH CASE NUMBER 2021100686

ORDER OF DETERMINATION OF INSUFFICIENCY OF
DUE PROCESS COMPLAINT

NOVEMBER 02, 2021

On October 22, 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 California School for the Deaf, Riverside. On November 1, 2021, California School for the Deaf, Riverside filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

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).

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, known as FAPE; (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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. Opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. Opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. Of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. Opn.].) 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.)

Local educational agencies are responsible for identifying and assessing students with special needs and for developing Individualized Education Programs, IEPs, in accordance with those IEPs. (Ed. Code, §§ 48200, 56302, 56340, 56344, subd. (b).) California state special schools for the deaf and blind are not included within the definition of a lead educational agency. (Ed. Code, § 56026.3.) The California Education Code sets forth the requirements for the education of students with exceptional needs, including deaf students. (Ed. Code, § 56000 et seq.) A local educational agency may refer a potential student to the California School for the Deaf for further assessment and suitability for placement. (Ed. Code, § 56326; Cal. Code Regs., tit. 5, § 17661, subd. (d).) Prior to completion of the assessment of suitability for placement at the California School for the Deaf, the student's IEP team, including appropriate California School for the deaf personnel, shall meet to determine the appropriate placement. (Cal. Code Regs., tit. 5, § 17661, subd. (d).) If a local educational agency refers a student for placement to meet its obligation to provide FAPE, it remains responsible for ensuring that the special education and related services provided to the child are provided in accordance with the Individuals with Disabilities Education Act, IDEA. (20 U.S.C. §§ 1411, et al.; 34 C.F.R. §§ 300.101, 300.201, 300.320-300.324, and 300.500.)

DISCUSSION

The complaint alleges Student resides within boundaries of Redlands Unified School District, defined in the complaint as District, and attends the California School for the Deaf in Riverside, California. Student's complaint alleges District denied Student a FAPE by among other things, failing to comprehensively assess Student in all areas of disability, including augmentative communication, speech and language, hearing, fine and gross motor deficits, failing to develop goals in the areas of reading, writing and math and failing to implement Student's governing Individualized Education Program,

IEP, during the school closure following the COVID-19 pandemic. Student's complaint does not define District, so OAH presumes that Student is alleging actions by Redlands, and not the California School for the Deaf. District is not named as party to the complaint.

The complaint references assessments conducted by the District in November 2020 and an IEP team meeting held by the District on November 13, 2020. The complaint references California School for the Deaf in the complaint's factual narrative, but contains no facts, claims or issues concerning the identification, evaluation or placement or provision of FAPE as to California School for the Deaf. As result, the complaint fails to provide California School for the Deaf with a description of the problem and the facts sufficient for California School of the Deaf to have an awareness and understanding of the issues forming the basis of the complaint. Overall, the complaint is vague and ambiguous because it fails to describe which entity or entities conducted Student's assessments, participated in Student's IEP team meetings, developed Student's goals, and made decision with respect to Student's FAPE. As a result, the complaint is insufficiently pled as California School for the Deaf.

Student's complaint contains eleven proposed resolutions, including funding of independent educational evaluations at public expense and compensatory education. Each resolution is directed to District, and not California School for the Deaf. 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 complaint fails to propose resolutions as to any denial of FAPE by California School for the Deaf. For this additional reason, Student's complaint is insufficient.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii) and shall be filed not later than 14 days from the date of this Order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings