BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GUARDIAN ON BEHALF OF STUDENT, v. RIVERSIDE COUNTY OFFICE OF EDUCATION; SUPERINTENDENT KENNETH YOUNG; RIVERSIDE UNIFIED SCHOOL DISTRICT; SUPERINTENDENT RICH MILLER; RIVERSIDE COUNTY MENTAL HEALTH; and DOES 1 through 20.	OAH CASE NO. 2013040771 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO RIVERSIDE UNIFIED SCHOOL DISTRICT AND RICH MILLER

On April 16, 2013, Guardian on behalf of Student (collectively, Student) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH) naming the Riverside County Office of Education (RCOE); Kenneth Young, Superintendent; the Riverside Unified School District (RUSD); Rich Miller, Superintendent; and Riverside County Mental Health (RCMH).

On May 1, 2013, RUSD and Superintendent Rich Miller timely filed a Notice of Insufficiency (NOI) 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.[1] 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] 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.[2] 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.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

Student's complaint alleges five issues. The first four claims are made against the named local educational agencies, including RUSD. The last claim is made against solely against the two Superintendents named as individually liable for violating Student's civil rights under 42 United States Code section 1983. As discussed below, all allegations pled against RUSD and Superintendent Miller are insufficiently pled.

In issue one, Student alleges that RUSD failed to provide him and/or his legal counsel with copies of his educational records. However, Student fails to state when he requested the records, which records were requested, to whom he made the request, and which records RUSD failed to provide him. Student also fails to state how he was denied a free appropriate public education (FAPE) by the failure of RUSD to provide him with the records in question. For this reason, issue one is insufficiently pled as to RUSD.

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[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[3] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *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.].

[6] 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 issues two and three, Student contends that between April 16, 2011, and April 16, 2013, when Student filed the instant due process complaint, RUSD failed to comply with the procedural and substantive requirements of the Individuals with Disabilities Education Act (IDEA) and state law. Student provides a long description of his educational background up to 2009, but he does not make specific allegations as to RUSD's specific failures during the time period covered by the statute of limitations. Student states that he entered the juvenile justice system as of May 1, 2011, and that the RCOE became responsible for his education at that time. Student appears to allege that RUSD was responsible for his education prior to that. Therefore, the time period for which RUSD appears to have been responsible for Student's education was from April 16, 2011, to May 1, 2011. However, Student makes no specific allegations as to what RUSD did to violate his rights during that two week period of time. As to the time period subsequent to May 1, 2011, Student fails to state why RUSD had any responsibility for his education while he was being held at juvenile hall, and what RUSD specifically did to violate his rights under the IDEA or state law after May 1, 2011. For these reasons, issues two and three are insufficiently pled as to RUSD.

In issue four, Student alleges that RUSD violated his rights under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and state civil rights laws. The jurisdiction of OAH to consider the allegations of issue four will be addressed in a separate order. However, irrespective of whether OAH has jurisdiction to hear these claims, the claims are insufficiently pled as to RUSD. As stated above, there are no allegations as to any specific actions that RUSD took to support Student's allegations that RUSD violated his rights from April 16, 2011, to May 1, 2011. Nor are there any specific allegations as to why RUSD had any responsibility to Student subsequent to May 1, 2011, and what RUSD may have done to violate Student's rights after that time. Issue four is therefore insufficiently pled as to RUSD.

In issue five, Student contends that RUSD Superintendent Rich Miller violated Student's rights under 42 United States Code section 1983. However, other than alleging general that Mr. Miller had supervisory responsibility for RUSD, Student makes no allegation that Mr. Miller was directly involved in any issues involving Student. In fact, Student makes no statement as to how Mr. Miller may have been involved in Student's education or when or how he was even informed of issues concerning Student. Issue five is therefore insufficiently pled as to Superintendent Miller. The jurisdiction of OAH to hear this issue will be addressed in a separate order.

Student's complaint is therefore insufficiently pled at to RUSD and Superintendent Miller in that it fails to provide them with the required notice of a description of the problem and the facts relating to the problem.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D) as to RUSD and Superintendent Miller.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[7]

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed as to RUSD and Superintendent Miller.

5. Under separate Orders, OAH has found that Student's complaint is sufficient as to RCMH and partially sufficient as to RCOE. If Student fails to file a timely amended complaint, the hearing shall proceed only as to RCMH and as to those issues found sufficient regarding RCOE.

Dated: May 6, 2013

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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