

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010030198

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On March 01, 2010, Parents on behalf of Student (herein collectively referred to as Student) filed a Due Process Hearing Request¹ (complaint) naming the West Contra Costa Unified School District (District).

On March 16, 2010, the District 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.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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 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

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).

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.

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 ALJ.⁷

Additionally, a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).)

DISCUSSION

Student alleges three issues in his complaint. As acknowledged by the District in its NOI, Student sufficiently describes in the body of his complaint the reasons why he believes, as alleged in his Issue Two, that the District failed to provide him with a free appropriate public education for extended school year 2009. Specifically, Student alleges that the District failed to make a specific written offer of placement for extended school year 2009, failed to provide Student with a one-on-one aide for the extended school year, and inappropriately reduced his services during that time. Issue Two is therefore sufficient.

However, Student’s Issues One and Three fail to fully and adequately describe the nature of the problems raised in those issues. In Issue One, Student contends that the District failed to appropriately implement Student’s individualized education program (IEP) during the 2008 – 2009 school year. Nevertheless, in spite of a number of pages dedicated to describing the factual background of the complaint, there is no clear delineation of which portions of Student’s IEP the District failed to implement and when this failure of implementation occurred.⁸ Issue One is therefore insufficient.

In Issue Three, Student alleges that the District failed to offer him a FAPE for the 2009 – 2010 school year during IEP meetings held on June 16, August 24, September 28,

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).

⁸ In its NOI the District also alleges that Student’s Issue One does not state how the alleged failure to implement Student’s IEP resulted in a loss of educational opportunity. However, there is no requirement that a student show that he suffered such a loss in order to state a cause of action for materially failing to implement an IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815.)

October 28, October 29, November 13, and December 9, 2009, and on February 25, 2010. It is unclear exactly why Student believes the District failed to offer him a FAPE during the alleged time period. In the factual background portion of his complaint Student indicates the following problems with the IEP process during the time frame at issue:

- a. The District unilaterally changed Student's applied behavioral analysis provider and only offered a one-week transition period from the previous provider to the new provider;
- b. The IEPS during extended school year 2009 and school year 2009 – 2010 are procedurally flawed because the District has failed and refused to present evaluations and progress reports;
- c. The IEPS do not offer FAPE because they propose to reduce or change goals;
- d. The IEPS are flawed because they fail to implement recommendations made by Dr. Mary Ann Powers in her functional behavior analysis which was presented at the IEP held September 28, 2009;
- e. The IEP of February 25, 2010, was procedurally flawed because the District prevented Student's parent(s) from participating in the meeting.

The above five issues are the only ones described in the factual background portion of Student's complaint that appear to relate to the time period of the IEPS alleged in Student's Issue Three. These five issues are sufficient in that they put the District on notice of the reasons Student believes the IEPS and/or IEP process during the specified time period either did not offer him a FAPE or violated his rights or those of his parents. However, these are the only issues that can be gathered from the factual background in Student's complaint that are specific enough to meet the legal standard for sufficiency. To the extent that Student intended to raise other issues with regard to the IEPS or IEP process for extended school year 2009 or school year 2009 – 2010, there is insufficient information to determine what those issues are. Should Student's intent be to make further allegations as to the IEPS at issue, he will need to clarify them in an amended complaint.

The District also contends that Student's resolutions are inappropriate because there is no nexus between many of the proposed resolutions and the allegations of the complaint. However, only statutory requirement is that a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. It will be Student's burden at hearing to prove the extent and necessity of any resolution he proposes. Therefore, while the District's assertion of the lack of nexus between the resolutions and the allegations of the complaint is well-taken, there is no basis for finding a complaint insufficient because a proposed resolution is not appropriate. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues Two and Three of Student's complaint, to the extent indicated above, are sufficient under section 1415(b)(7)(A)(ii).
2. Issue One, and any sub-issues of Issue Three not covered by paragraphs (a) through (e) above of Student's complaint are insufficiently pled under section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁹
4. The amended complaint shall comply with the requirements of 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 Issue Two, and Issue Three to the extent described in paragraphs (a) through (e) above.
6. Pursuant to Education Code, section 56505, subdivision (e)(6), upon the request of a parent who is not represented by an attorney, OAH shall provide a mediator to assist the parent in identifying the issues and the proposed resolutions of the issues. Should Student's Parent desire the assistance of a mediator, Parent must contact OAH at (916) 263-0880 immediately upon receipt of this Order to request assistance in formulating the issues in Student's complaint.¹⁰

Dated: March 26, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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

¹⁰ Student's complaint was filed by his attorney of record at the time. However, Student's attorney withdrew as his legal representative on March 5, 2010, and no other attorney has since made an appearance on Student's behalf.