

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010041041

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 20, 2010 Student filed a Due Process Hearing Request¹ (Complaint) naming Upland Unified School District (District).

On April 27, 2010, District 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

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."⁵ The pleading

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.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

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

DISCUSSION

Student's complaint alleges seven claims in the Complaint, some of which are sufficient and some of which are insufficient. The issues are as follows: Issue One, did the independent evaluation for occupational therapy include sensory integration; Issue Two, did all members of the IEP team participate in the January 5, 2010 IEP; Issue Three, did any teachers or school administrative staff care or believe that Student was bullied; Issue Four, did District's change in Student's schedule affect his social interaction and discipline; Issue Five, did District's special education services result in Student's detention and did District limit parent's access to the school; Issue Six, did the District dismiss two teachers present at the March 26, 2010 IEP before Student's advocate could ask them questions, and did the IEP team ignore Student's advocate's report; and, Issue Seven, did District fail to give prior written notice when it refused to provide an ADHD behavior support plan and in service training for ADHD awareness.

Issues One, Two, Six and Seven are sufficiently pled to put District on notice as to the basis of Student's claims. As to Issue One, District does not challenge the sufficiency of this claim but requests that this issue be dismissed because it is a moot. Whether or not an issue is moot is not determined in a NOI. Therefore, Issue One is sufficient. Issue Two is sufficient because Student identifies a problem and salient facts: parent was unable to meaningfully participate at the January 5, 2010 IEP because District dismissed specialists, and teachers, and Student's advocate from the IEP meeting before goals, strategies and benchmarks were finalized. Issue Six is sufficient because it identifies a problem with salient facts: parent was unable to meaningfully participate in Student's March 26, 2010 IEP because District dismissed members of the IEP team and ignored Student's advocate. Issue Seven is sufficient because it identifies a problem with salient facts: District failed to give prior notice and failed to develop an ADHD behavior support plan and in service training for ADHD awareness.

With regard to Issues Three, Four, and Five, Student fails to allege sufficient facts that would provide District the required notice of a description of the problem and the facts relating to the problem. Issue Three does not provide facts as to why the District's alleged

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).

failure to believe and care that Student was bullied would deny Student a FAPE. Issue Four does not provide facts as to why Student's change of class schedule and the absence of an after school program would deny Student a FAPE. Issue Five does not provide facts as to why his resource teachers reporting that Student is in detention and staff requesting that parent not call school would deny Student a FAPE. Issues Three, Four and Five do not state an issue related to the identification, evaluation or educational placement of Student or the provision of a FAPE. Therefore, Student has failed to state sufficient facts supporting the claims in Issues Three, Four and Five, and the claims are insufficient.

Student proposes eighteen resolutions. 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).) Resolutions One through Four, Six, Nine, Twelve, Thirteen, Fifteen, and Sixteen stated in Student's Complaint are well-defined. These resolutions meet the statutorily required standard of stating a resolution to the extent known and available to him at the time.

However, proposed resolutions Five, Seven, Eight, Ten, Eleven, Fourteen, Seventeen and Eighteen are not well-defined. Resolution Five proposes that District ensure a uniform complaint procedure to remove pre-emptive IEP sabotage and bullying. Resolution Seven proposes that District provide a buddy system adult mentor as per suggestion of educational consultant. Resolution Eight proposes that District help cooperate and collaborate with appropriate entities to address bullying, abuse, educational neglect and ignoring his basic IEP needs and educational, social, and emotional needs at school. Resolution Ten proposes that District help the teacher articulate or provide documentation of what works for her in order to focus on education and a peaceful bully-free day in lieu of targeting. Resolution Eleven proposes that District help involve parents by providing feedback and participation. Resolution Fourteen proposes that District help with initial referral to GATE and honor referral by Dr. Robert Forsythe. Resolution Seventeen proposes that District learn from other schools mistakes. The resolutions described above are not related to the identification, evaluation or educational placement of Student or the provision of a FAPE. Finally, Resolution Eighteen does not propose a resolution but provides a narrative with additional facts regarding parent concerns.

ORDER

1. Issues One, Two, Six and Seven of Student's complaint are sufficient under section 1415(b)(7)(A)(ii).
2. Issues Three, Four, and Five 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).⁸ At the parent's request, a mediator can be appointed to assist a Student who does not have an attorney identify issues and proposed resolutions for hearing. (Ed. Code §56505, subd. (e)(6).). If Student's parent would like the services of a mediator to assist in this matter, Student should make that request in writing to OAH or telephone the assigned staff person.

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 Issues One, Two, Six and Seven in Student's complaint.

Dated: April 28, 2010

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.