

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010050142

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 5, 2010, Student filed a Due Process Hearing Request¹ (Complaint) naming Los Angeles Unified School District (District).

On May 19, 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

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

DISCUSSION

Student’s complaint alleges four claims, which are all insufficiently pled as discussed below. With respect to Issue One, Student alleges that he was denied help on several occasions when he asked Ms. Paige to help him. With respect to Issue Two, Student alleges that Ms. Paige told Student’s Teacher Assistant to not help him. With respect to Issue Three, Student alleges that he asked Ms. Paige for a calculator and she stated that it wouldn’t help him because he would still get the answer wrong. These allegations are insufficient because they fail to describe the nature of the problem of the child, educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child and facts relating to the problem. Specifically, the facts fail to identify: why Student is in special education; the nature of the problem; what school does Student attend; and how could his teacher and his aid help him with his education and classroom work.

With respect to Issue Four, Student alleges that various statements on his IEP evaluation relating to Student’s behavior are not true. This allegation is insufficient because it fails to provide: the date of this IEP; the IEP team’s offer to address Student’s alleged behaviors; and the team’s offer of placement and services.

Therefore, Issues One through Four are insufficient in that they fail to provide District with the required notice of a description of the problem and the facts relating to the problem.

Although Student’s claims are insufficient, Student’s proposed resolution is clear. Parent proposes that District remove Student from his special day class because he is unhappy and not motivated. Parent also states that she has a number of schools in mind that have excellent resource teachers. It would be helpful if parent would add facts to the Complaint that relate to Student’s present classroom placement and why she believes Student would benefit from being in a less restrictive placement.

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).

ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸
3. 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.
4. Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in amending their due process hearing request.
5. If Student fails to file a timely amended complaint, the complaint will be dismissed.
6. All dates previously set in this matter are vacated.

Dated: May 24, 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.