

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080155

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 03, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming District. On August 18, 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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.⁴ These requirements prevent vague and confusing complaints, and promote fairness by providing the

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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁸

DISCUSSION

Here, Student alleges the following:

1. District denied Student a FAPE during the 2008-2009 and 2009-2010 school year by failing to properly assess him in the area of eligibility with a social emotional, psycho-educational, speech, physical therapy, adapted physical therapy, and occupational therapy assessment.

2. District denied Student a FAPE in the February IEP “of Student’s freshman year” by not implementing accommodations or services designed to meet his unique needs.

3. District denied Student a FAPE at the February 18, 2009 IEP and after the August 2009 Hathaway psychological evaluation by not considering relevant information concerning eligibility.

4. District denied Student a FAPE at the February 10, 2010 IEP:

a. by not offering the least restrictive placement, a Resource Specialist Program instead of a Special Day Class;

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

b. by not assessing Student's unique needs in the areas of: functional behavior, speech and language, physical therapy, adapted physical education, and occupational therapy;

5. District denied Student a FAPE

a. by denying parents' requests and impeding their right to participate in the IEP and;

b. by not having the necessary members of the IEP team present at the February 18, 2009 IEP, the March 9, 2010 IEP and the March 22, 2010 IEP.

The facts alleged in Issues 1, 3, 4a, 4b and 5b of Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint.

Issues 2 and 5a in Student's complaint are insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem, as discussed below.

With regard to Issue 2, Student fails to allege details of the IEP of his freshman year which identify the services he requires. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

With regard to Issue 5a, Student fails to allege the date or dates of the IEP at issue nor the specific requests made by parents at each IEP which impeded their rights. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

ORDER

1. Issues 1, 3, 4a, 4b and 5b of Student's complaint are sufficient under section 1415(b)(7)(A)(ii).

2. Issues 2 and 5a 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 service of this order.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 3, 4a, 4b and 5b of Student's complaint..

Dated: August 31, 2010

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings