

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS GATOS UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010100305

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 6, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming the Los Gatos Union Elementary School District (District or LGUSD).

On October 20, 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 title 20 United States Code section 1415(b)(7)(A).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

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 Title 20 United States Code sections 415(b) & (c).

³ All future references are to title 20 United States Code section 1415 unless otherwise specified.

⁴ Section 1415(b)(7)(A)(ii)(III) & (IV).

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.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 Individuals with Disabilities Education Improvement Act of 2004 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 Administrative Law Judge.⁸

DISCUSSION

Student’s complaint alleges the following six issues or problems.

1. Without prior written notice, and without evidence to bolster its recommendation of FAPE [free appropriate public education], LGUSD is disregarding the recommendations of three IEEs [independent educational evaluations] that advise for an intensive ABA and speech program.
2. LGUSD did not consult with parents about [Student’s] IEP [individualized education program] provisions.
3. Without prior written notice, and without evidence to bolster its recommendation of FAPE, LGUSD unilaterally slashed [Student’s] IEP provision in speech therapy by 70 percent.

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).

4. Without prior written notice, and without evidence to bolster its recommendation of FAPE, LGUSD unilaterally slashed [Student's] provision in occupational therapy by 43 percent.

5. Without prior written notice, and without evidence to bolster its recommendations of FAPE, LGUSD unilaterally denied [Student's] mainstreaming/inclusion module of his last signed IEP.

6. LGUSD is out of compliance pursuant to Education Code section 56325 [subdivision (a)(1)] which states that the "local education agency shall provide the pupil with a free appropriate [public] education, including services comparable to those described in the previously approved individualized education program, in consultation with the parent, for a period not to exceed 30 days."

The District contends that all issues in Student's complaint are insufficient because none of the issues describes with any specificity the issues raised, the time frame to which each issue refers or the IEP which Student contests. The District points out that it has offered three placements to Student since he enrolled in the District: a summer school placement for extended school year (ESY) 2010, an interim placement at the beginning of the 2010-2011 school year, and a placement at an IEP team meeting held on September 15, 2010. The District's arguments are persuasive. None of Student's issues specifies which of these three placements or time frames he disputes. Student attaches to his complaint a letter from his educational advocates to the District. The letter was written on August 30, 2010, and raises issues with regard to the interim placement offered by the District. However, since the letter was written prior to the IEP of September 15, it does not clarify what time frame, placement, and IEP provisions Student disputes in his complaint.

Issue one is insufficient because it fails to allege which three IEEs Student believes the District disregarded and whether this occurred for ESY 2010, for his interim placement, for the September 15 IEP offer, or for all three. Issues two, three, four, and five likewise fail to specify during which of the three time frames the District took the actions with which Student disagrees. Additionally, with regard to issues one, three, four, and five, Student fails to state why he requires more services than those which the District allegedly offered to him.

With regard to issue six, Student fails to specify from which school district he transferred, when he enrolled in the District, what placement and services are contained in his previous IEP, and which of the provisions of Student's previous IEP the District failed to implement when he enrolled there. Student also fails to state how he suffered a loss of FAPE because the District failed to implement his previous IEP. Although the letter from Student's educational advocates to the District details placement, services, goals and objectives that Student believes he requires in order to receive a FAPE, it is unclear from the letter whether these are provisions included in the IEP Student brought with him from his previous school district or are provisions which were not in a previous IEP but are ones which Student believes he now requires in order to access his education.

For these reasons, Student's complaint is insufficiently pled in its entirety.

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).⁹
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. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: October 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.