

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010100675

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On October 11, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming Hemet Unified School District (District). On October 14, 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

District contends that the issues in the Complaint are insufficient because they fail to set out sufficient facts or information to support Student’s claims. In addition, District argues that Student fails to allege a specific IEP date and facts regarding how Student lost his educational opportunity, and fails to provide sufficient information so that it would be able to meaningfully participate in mediation and prepare for trial.

Student’s complaint alleges four claims, which are all insufficiently pled because Student fails to provide the date or dates of the IEPs referenced. In addition, Student’s claims fail to provide District with the required notice of a description of the problem and the facts relating to the problem.

With respect to Issue One, Student requests assistive technology to help Student complete tasks and understand basic knowledge of words. Issue One is insufficient because Student fails to provide the date of the IEP referenced and state why Student requires a high efficiency processor Intel Corte 17 or an AMD phantom II to meet his special education needs. With respect to Issue Two, Student requests teachers and staff to understand IEP written within the last two months to completely understand what to ask questions of the IEP team and the duties regarding the IEP team decision. Issue Two is insufficient, because it fails to provide the date of the IEP referenced, and is unclear as to who are the teachers and staff that “need to understand” the IEP, who would be asking questions of the IEP team, and what would be required of that “teacher” to provide Student with a “free appropriate education.”

With respect to Issue Three, Student requests that district transportation listen to anyone else on the IEP team regarding the safety and protection of Student. Issue Three is

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).

insufficient because Student fails to provide the date of the IEP referenced, the nature of the safety and protection issues, and what the IEP team offered Student regarding transportation. Student also requests that the assistant director of transportation be reprimanded for her conduct before, during and after the IEP team meeting.⁸ With respect to Issue Four, Student requests the immediate reprimand of four teachers, regarding their alleged disregard of the IEP decision on the conduct classroom activity production and methods of communication with parents. Issue Four is insufficient because Student fails to provide the date of the IEP referenced and state if the four teachers attended the IEP. Student also fails to explain “classroom conduct activity production” and how that affects Student’s access to his special education.

With regards to Issues One, Two, Three and Four, Student fails to state enough facts to support these claims, and these claims are insufficient. Therefore, District’s Motion is granted.

ORDER

1. Student’s complaint is insufficiently pled under section 1415(c)(2)(D).
2. 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.
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 complaint will be dismissed.

⁸ A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) Regarding Student’s request for a reprimand, this is not a remedy available to Student under the IDEA , California Education Code or case law. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.)

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

6. All dates previously set in this matter are vacated.

Dated: October 27, 2010

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings