

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LAGUNA BEACH UNIFIED SCHOOL
DISTRICT and SADDLEBACK VALLEY
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011070983

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 27, 2011, Student, through his parents, filed a Due Process Hearing Request¹ (complaint) naming the Laguna Beach Unified School District (Laguna Beach) and the Saddleback Valley Unified School District.

On August 11, 2011, Laguna Beach 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).

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

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).

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 contains 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 Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges a total of six claims in the complaint, five of which are raised solely as to Laguna Beach.⁸ In its NOI, Laguna Beach contends that the paragraphs numbered two, four, five, and seven of Student’s complaint are insufficient. As discussed below, Laguna Beach’s NOI is well-taken as to issues five and seven, and part of issue four. However, a review of Student’s entire complaint results in the conclusion that Laguna Beach’s contentions as to issue two and part of issue four, are not persuasive.

In issue two, Student alleges that the District denied him a free appropriate public education (FAPE) under inter alia, the Individuals with Disabilities Education Act (IDEA), when it failed to develop a comprehensive individualized education program (IEP) for him. Student contends that Laguna Beach failed to identify all his unique needs, develop meaningful and appropriate goals, develop and implement appropriate accommodations, provide him with an appropriate or meaningful transition plan, or provide him with an

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.

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).

⁸ Student’s complaint is not numbered correctly. Paragraphs numbered three and six are missing.

appropriate level of support services. Laguna Beach contends this issue is insufficiently pled because Student's complaint fails to identify the specific IEP within the two-year statute of limitations which Student contends denied him a FAPE.

The District's arguments are misplaced with regard to issue two. First, at page 22 of his complaint, Student prefaces the recitation of all his issues by referencing that the time period covering the issues is July 2009 to the present. Student filed his complaint on July 27, 2011. The time period stated covers the appropriate two-year statute of limitations prior to the filing of the complaint. Additionally, Student is not attacking a specific IEP. Rather, his contention is that the District failed to develop an IEP for him during the time period at issue. He therefore could not identify a specific IEP because it is his position that Laguna Beach was required to develop an IEP for him but did not do so. Issue two is sufficient.

In issue four, Student alleges that Laguna Beach violated the IDEA, and other federal and state statutes, when it failed to conduct annual IEP meetings for him, failed to properly advise his parents of their rights, and subjected Student to a hostile school environment because it was deliberately indifferent to bullying of him. Laguna Beach contends that issue four is insufficient because it fails to specify the time frame within the statute of limitations that these violations allegedly occurred. It also contends that the issue fails to provide facts supporting Student's contention that he was subjected to a hostile school environment during the statutory time frame and fails to state about which specific rights Laguna Beach failed to notify Student's parents or when that allegedly occurred. Laguna Beach also argues that issue four is insufficient because Student fails to explain why the Office of Administrative Hearings (OAH) has jurisdiction over the issues regarding bullying of Student.

As explained above, Student prefaces all his issues by stating that they pertain to the period from July 2009 to the present, which encompasses the statute of limitations. Laguna Beach has therefore been put on notice of when Student asserts the alleged violations occurred. As to any jurisdictional issues, Laguna Beach does not state any authority in support of its position that a complaint is required to plead facts supporting jurisdiction in order to be sufficient for the purposes of withstanding an NOI. Any issues that Laguna Beach contends are beyond the jurisdiction of OAH would be the subject of a motion to dismiss rather than an NOI. However, Laguna Beach is correct that the complaint fails to give any specific facts as to allegations of bullying. There are no facts stating who was bullying Student, when the bullying was taking place during the statutory period, how Laguna Beach knew Student was being bullied, and, significantly, what form the bullying took. Additionally, issue four fails to state about which rights Laguna Beach failed to advise Parents, and when, allegedly this occurred, particularly since the complaint states that no IEP was developed for Student during the time from July 2009 to the present. Without more concrete facts, the allegations in issue four concerning alleged bullying of Student and the alleged failure to advise Student's parents of their rights are insufficient.

In issue five, Student contends that Laguna Beach denied him a FAPE when it refused to do additional testing to properly evaluate Student's known deficits in written language. Laguna Beach is correct that Student's complaint fails to state who requested that such an

evaluation be done, to whom the request was made, and when the request was made. A thorough reading of the 29 pages of Student's complaint indicates that there are no specific factual contentions at all concerning this issue that might have taken place during the two years prior to the filing of the complaint. Issue five is therefore insufficient in its entirety.

With regard to issue seven, Student contends that Laguna Beach denied him a FAPE when it modified his grades without fully disclosing this information in his IEP. However, Student states in his complaint that his parents gave notice to Laguna Beach in May 2009 that they were withdrawing Student from school and placing him in a private school. The complaint also states that Student has attended the private school since the fall of 2009. There are no facts in the complaint indicating that the District developed an IEP for Student within the statutory two-year period of time from July 27, 2009, to the present, in which it could have failed to disclose that it was modifying his grades. In fact, Student's issues two and four contend that the District failed to hold IEP meetings and develop an IEP for Student within the statutory timeframe. Nor does Student explain which of his grades was modified, by whom they were modified, and when this occurred. Laguna Beach is correct that issue seven is insufficient

ORDRR

1. Issue one, sub-issues (a) and (b), issue two, and part of issue four of Student's complaint, as discussed above, are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Part of issue four, as discussed above, and issues five and seven of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹

4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date 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 as to issues one (a) and (b), two, and that part of issue four found sufficient as described above, of Student's complaint.

Dated: August 15, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings