

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRANKLIN MCKINLEY SCHOOL
DISTRICT.

OAH CASE NO. 2011080583

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 16, 2011 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Franklin McKinley School District (District).

On August 31, 2011, the 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 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 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 Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges four claims in the complaint, some of which are insufficiently pled as discussed below.

1. Issue One: Student states that according to the IEP meeting on May 11, 2011, the new program contained in the IEP does not have standard levels of third grade for Student, and the IEP takes away the writing and lecture therapy which is the major education problem for Student.

The issue is adequately phrased to place the District on notice of the nature of the problem allow the District to prepare its defense. The issue is specific as to date and event (IEP meeting). It indicates that Parent believes the proposed program for Student does not comply with third grade standards, and further indicates that writing and lecture therapy has been removed from the proposed IEP. Although Student has not provided an extensive factual basis to support his claim, he is not required to do so. The statement that writing and lecture therapy is a major problem for Student is sufficient, and places the District on notice of the problem. Issue One is sufficient.

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).

2. Issue Two: While Issue One is sufficient, Issue Two is not. Student states that the IEP program was developed by the expert accredited specialist so that the expected program was the standard level that pertains to the two and three year, now Mrs. Beck specialist in special resources doesn't have the experience to develop special programs. The nature of the problem contained in Issue Two is unclear. Student fails to indicate specifically what was wrong with the IEP or how it failed to address Student's needs. Issue Two fails to indicate how Ms. Beck is involved, or why she is unable to develop special education programs. Issue Two is insufficient.

3. Issue Three: Student states that the District is refusing to execute an exam for dyslexia by a specialist outside of the District. The District's arguments regarding Issue Three as contained in their NOI, clearly indicates that the District is well aware of the nature of the issue and has been capable of preparing an initial defense. The District's argument, rather, provides perhaps affirmative defenses to Student's claim. The claim itself is not unclear. Issue Three is sufficient.

4. Issue Four: Student states that Student has a low academic level because of the neglect by the school for not supporting the adequate services according to the special education code. Student fails to identify a specific support or supports which have been provided and failed or which should have been provided and were not. The claim does not contain any specific need of Student, nor give reasons why the District's program was inappropriate. Lastly, Student has not identified a time frame for this claim. It is unknown when the District failed to provide services. Issue Four is insufficient.

As a result, Student's complaint is insufficiently pled in Issues Two and Four, in that they fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. Issues One and Three are sufficient as currently pled.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues One and Three of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues Two and Four of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

⁸ Ed. Code, § 56505.

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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Three in Student's complaint.

6. OAH shall provide a copy of this Order to Parents translated from English into the Spanish language.

Dated: September 02, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

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