

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE UNIFIED SCHOOL
DISTRICT

OAH CASE NO. 2011090153

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 2, 2011 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Palmdale Unified School District (District).

On September 8, 2011, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. Student has not filed a response or opposition to the NOI.

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 one issue, specifically, whether the District denied Student a free appropriate public education (FAPE) by failing to offer an appropriate placement and services to meet Student’s unique needs and that afford her meaningful progress during the 2010-2011 school year.⁸ The issue then provides nine sub-claims, some of which are sufficient and some which are insufficient. The issues are discussed below.

1. Claim (a) contends that the April 15, 2011 IEP was not appropriate because the District failed to consider Parents’ concerns. The claim cites relevant federal and state law, and provides a sufficient factual basis to place the District on notice of Student’s claim. Specifically, Student alleges that the District failed to address Parents’ concerns regarding (1) Student’s increasing school-based anxiety; (2) Student being bullied at school; and (3) Student’s failure to progress in speech and language skills. Claim (a) 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).

⁸ Student’ Statement of Known Facts indicates that Parents consented to the January 15, 2010 IEP and all prior IEPs.

2. Claim (b) contends that the District did not conduct a timely IEP. The claim cites relevant federal and state law, and provides a sufficient factual basis to place the District on notice of Student's claim. Specifically, Student alleges that her annual IEP was required to be held by January 15, 2011, and the District did not hold the IEP meeting until April 15, 2011. Student further alleges that in December 2010, Parents requested an IEP meeting, and the District failed to conduct an IEP until April 15, 2011. Claim (b) is sufficient.

3. Claim (c) contends that the April 15, 2011 IEP was not substantially appropriate. While the complaint cites relevant federal and state law, Student's complaint provides no factual contentions and is simply a conclusion. It further appears that the content of Claim (c) is merely an introduction to Students remaining claims. As such, Claim (c) is insufficient as a claim within itself.

4. Claim (d) contends that the District failed to offer appropriate speech and language services during the 2010-2011 school year. Student's support of this claim is conclusory and does not provide a factual basis for determining whether the offered services were inappropriate. While it is clear from Student's Statement of Known Facts that the 2010 evaluation report prepared by Children's Hospital of Los Angeles recommended 90 minutes of speech and language therapy, and the April 15, 2011 IEP offered 60 minutes of speech and language services, Student's objections as subsequently phrased in Claim (d) makes little sense. Student contends that 60 minutes of group speech is insufficient to provide Student meaningful progress. Student also requires direct speech for articulation. "We are therefore requesting that the District provide Student with one hour per week of individual speech therapy through a non-public agency (NPA)." Student does not indicate why Student cannot make meaningful progress; does not indicate how much group speech and language services would be appropriate; why Student requires one hour per week of individual services to address articulation; and why those services must be provided by an NPA. Claim (d) is insufficient.

5. Claim (e) contends that the April 15, 2011 IEP failed to include appropriate, measurable goals by which Student could make meaningful progress. Student expounds on the legal requirements of goals, and simply concludes that Student has been denied a FAPE. While Student has identified specific goals, there is no explanation of why these goals are not appropriate for Student, or why they cannot be measured. Further, if it is assumed that Parents' concerns that the IEP team failed to appropriately identify Student's present levels of performance (PLOP), Student has provided no information to support that contention or inform the District of Student's true PLOP's. Claim (e) is insufficient.

6. Claim (f) contends that the District failed to provide Student with appropriate counseling services at the April 15, 2011 IEP. Student's Statement of Known Facts indicates that Parents agreed to the school-based counseling offered in the IEP; however, should this (the counseling) prove unsuccessful...then we (Parents) reserve the right to seek AB 3632. Student has alleged no information to suggest that the counseling offered by the District has

not been successful or what is wrong with the counseling as provided. Further, there is no allegation that Parents have informed the District that the counseling is unsuccessful or that they have requested a mental health referral. Claim (f) is insufficient.

7. Claim (g) contends that the District failed to provide safe transportation for Student which required Parent to transport to and from school. Student correctly indicates that under California law, special education related services include transportation. Student, however, fails to indicate why Student requires transportation, whether her placement is her home school, or what DIS services require Student to be transported from school. As such, Claim (g) is insufficient.⁹

8. Claim (l)¹⁰ contends that the District failed to offer a continuum of *program options* at the April 15, 2011 IEP meeting. Student alleges that she was offered only one *program* and the District did not make a continuum of *program options* available to Student. Given Student's citation of relevant law, it is apparent that there is a misunderstanding of the difference between continuum of placement and the offered IEP program. Student has not indicated that placement was an issue at the IEP meeting, nor does the complaint suggest that placement is in issue. In support of this contention Student indicates that the *program* has not met Student's needs. Student has provided no factual basis to suggest that Student's placement was inappropriate, or if inappropriate, what would represent Student's proper placement. Claim (l) is insufficient.

Claims (a) and (b), as contained in Student's one issues, are sufficiently pled to put the District on notice as to the basis of Student's claims.

With regard to Claims (c), (d), (e), (f), (g) and (l), Student fails to allege sufficient facts to support the claims, and therefore, these claims are insufficient.

Student's proposed resolutions request the following¹¹:

1. Compensatory hours for individualized speech and language therapy;
2. Compensatory hours in intensive reading program;
3. Hold an IEP meeting where appropriate goals are drafted.

⁹ It is also of concern that the transportation claim is more likely related to Student's potential tort claim against the District.

¹⁰ Student's complaint does not contain an (h), (i), (j), or (k).

¹¹ The proposed resolutions have been renumbered from the complaint.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in the above stated resolutions is not well-defined as they apply to Claims (a) and (b). Student, however, has met the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

The following proposed resolutions are insufficient and are stricken from the complaint:

4. Compensatory counseling to assist Student to develop strategies in coping with an alleged assault, and school-based bullying. Student's allegations of assault are based in tort, not in special education and cannot be remedied through a due process hearing. Further, Student has not provided any factual basis to indicate what bullying took place, when it occurred, or how it affected Student's school performance. Additionally Student has failed to establish any statutory authority to provide OAH with jurisdiction over the issue.

5. OAH has no jurisdiction to require a District to conduct an assembly on anti-bullying. Further, as stated above, the complaint is deficient in presenting a factual basis regarding bullying.

6. The issue requesting reimbursement for transportation has been deemed insufficient, therefore this requested remedy is also stricken..

7. Requiring an acknowledgement that a District employee harmed Student. As stated above, determination of the factual basis of the alleged assault is based in tort, and is not within the jurisdiction of a due process hearing. The remedy is therefore unavailable.

ORDER

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

2. Issues (c), (d), (e), (f), (g) and (l) 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).¹²

¹² The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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 Claims (a) and (b) in Student's complaint.

Dated: September 13, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings