

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011100059

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 2, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Los Angeles Unified School District (District).

On October 7, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint. Student did not file a response.

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

District contends Student’s complaint is insufficiently pleaded because it does not connect the list of specific facts Student set forth in the complaint with cognizable issues under the Individuals with Disabilities Education Act (IDEA). As such, District contends that it is unable to discern from the complaint how District failed in its identification, evaluation or placement of Student in relation to the provision of FAPE. District further claims that Student failed to describe with sufficient specificity the components of the IEPs mentioned that Student found objectionable or constituted District’s failure to provide Student a FAPE, and the relevant time period of the dispute. As further discussed below, Student’s complaint is insufficiently pleaded.

Student lists eleven factual clauses which address a time period ranging from March 14, 2006, through September 30, 2011, reference several IEPs, Student’s extraordinary talent as a pianist (ignored by the IEP team), his high cognitive ability, District’s failure to challenge him in math, and his attempts to gain admittance to a District magnet, referred to as “LACES.” The eleven factual clauses read together, appear to raise a claim that District

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).

denied Student a FAPE by failing to provide Student an appropriate placement, and that Student should be placed in LACES. However, it is unclear from Student's complaint, which IEPs are at issue, (which are within the two year statute of limitations measured backward from the date of filing) and, other than placement, if there are other claims with the IEP related services and goals, as the clauses regarding his music and math skills suggest.

In addition to these factual clauses contained in the complaint, Student attaches a letter to District dated October 1, 2011, referencing a conversation at the September 30, 2011, IEP, regarding his request for an independent educational evaluations (IEE). This letter confirms that District received notice of Student's IEE request. The IEE is not part of Student's complaint. Student is not obligated to file a claim related to the IEE, but the attachment of the letter adds to the confusion of the due process hearing request.

For these reasons, Student's complaint is insufficiently pleaded. Student's complaint is vague and confusing, and fails to provide District with sufficient information to prepare for the hearing and participate in the required resolution session and mediation.

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. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

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

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

⁸ Ed. Code, § 56505.

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

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

Dated: October 12, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings