

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.

OAH CASE NO. 2011110699

ORDER PARTIALLY GRANTING
NOTICE OF INSUFFICIENCY

On November 16, 2011, Student's father (Father) on behalf of Student (Student) filed a Request for Mediation and Due Process Hearing¹ (complaint) naming District. District timely filed a Notice of Insufficiency as to Student's complaint on November 22, 2011. For the reasons discussed below, the NOI is partially granted.

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 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 Administrative Law Judge.⁷

DISCUSSION

The complaint lists six issues, with proposed resolutions for each issue.

In issue one, the complaint alleges that Student’s fifth grade homework assignments were “packet” style, very repetitive, extremely tedious, and similar to the assignments he received in the fourth grade. Issue one does not identify a specific IEP, whether homework accommodations were included in the IEP, or offer any facts as to how District has denied Student a FAPE. As discussed above, a complaint must relate to relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to Student. Therefore, issue one is insufficient as pleaded. Student will be granted leave to amend issue one.

Issue two alleges that Student’s teacher is not treating both of Student’s parents, who are divorced, equally. Father alleges that the teacher sends homework originals home every week, and copies every other week. Father alleges that his ex-wife, who volunteers in Student’s classroom, may be influencing the teacher against Father. Issue two fails to state a claim as that relates to a specific IEP, or to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student. Therefore, issue two is insufficient as pleaded. Student will be granted leave to amend issue two.

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).

Issue three alleges that Father requested an emergency IEP for Student, which Student's teacher refused to convene. However, Father also alleges that, after contacting the teacher's supervisor, an IEP was held. Father does not allege in issue 3 when he requested the emergency IEP, when the IEP was held,⁸ or how he was denied meaningful participation in Student's IEP by the teacher's initial refusal to hold an emergency IEP. Father also does not allege a proposed remedy. Therefore, issue three is insufficiently pleaded. Student will be granted leave to amend issue three.

Issues four, five, and six all relate to the IEP held at Father's request as referred to in issue 3. Issue four alleges that the IEP was not meaningful because teacher was not prepared and did not have a grade book or any assessment of Student's progress in relationship to his goals. Student's proposed remedy refers to the need for the teacher to be more prepared to discuss Student's progress toward his goals and to be more prepared for the IEP meeting. Issue five alleges that Student's teacher was rude to Father's advocate at the October meeting, and denied the advocate the right to speak. In his proposed resolution, Father alleges that the teacher should act more professionally, and has allowed Student's maternal grandmother to actively participate in past IEPs. Issue six alleges that Student's teacher favored Student's mother at the IEP meeting, making the environment hostile for Father. Father's proposed resolution relates to limiting Student's mother's participation at IEP meetings. Issues four, five and six raise the issue of whether Father was denied the right to meaningfully participate in the IEP process under the Individuals with Disabilities Education Act, and are therefore sufficiently pleaded to put District on notice of the issues and prepare for a resolution session, mediation and a hearing.

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 complaint⁹ Father is encouraged to contact OAH for assistance if he intends to amend their due process hearing request.

ORDER

1. Issues 4, 5, and 6 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1, 2, and 3 of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

⁸ However, a notation in the margin of Issue 4 identifies the date of October 19, 2011, which presumably is the date of the IEP.

⁹ 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).

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. 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 on Issues 4, 5, and 6 in Student's complaint.

Dated: November 29, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings