

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. 2012030200

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 6, 2012, Parent, on behalf of Student, (Student) filed a Due Process Hearing Request¹ (complaint) naming the Los Angeles Unified School District(District) as respondent. On March 12, 2012, District 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 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 Individuals with Disabilities Education Act 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 raises general areas of concern, but fails to sufficiently allege a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the Student, or the provision of a FAPE. The complaint fails to provide essential facts as to the nature of the dispute that would provide District with the required notice and allow District a fair opportunity to respond to the complaint, and participate in a resolution session and mediation. Student’s complaint is legally insufficient.

Student’s complaint identifies several needs of the Student including his needs for assistance to redirect his focus and to stay on task, verbal praise, positive reinforcement, and the re-teaching of social skills, in order for Student to meet his annual goal. The complaint is devoid of facts regarding Student’s eligibility for special education and related services, and whether and how the District has failed in its duties to provide services and placement, and during which time period. Student does not indicate what his qualifying disability is, whether there is a specific individualized education program (IEP) that the District is not implementing or that Student is disputing, or which specific goals are at issue and for what

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. LenapeRegionalHigh 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).

time frame. The complaint does not describe how the District's services or placement are insufficient or negatively impact Student's ability to receive some educational benefit. Therefore, Student's complaint, in its entirety, fails to describe a problem relating to the identification, evaluation or educational placement of the Student, or the provision of a FAPE.

As a proposed resolution, Parent requests that Student remain in regular day class with pull out for a special day class three times per week. Parent also requests "a state mediation" to help Parent with his son and to monitor his annual goal. 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).) While Student provides a proposed resolution, Student has failed to sufficiently identify a problem in need of this resolution. It is unclear if Parent is requesting a mediation only session, instead of a hearing. Parent is entitled to complete a mediation only form request if Parent determines not to file an amended complaint.

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

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 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.

8 Ed. Code, § 56505.

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

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

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

Dated: March 15, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings