

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EASTSIDE UNION SCHOOL DISTRICT
(LANCASTER).

OAH CASE NO. 2012050086

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING
MOTION TO DISMISS

On April 30, 2012, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Eastside Union School District (District).

On May 7, 2012, Justin R. Shinnefield, Attorney at Law, filed a Notice of Insufficiency (NOI) on behalf of District, as to Student's complaint. District also filed a motion to dismiss 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 alleges a single claim, which is insufficiently pled as discussed below. Student’s single allegation is that Parent was not invited to the interim individualized education program (IEP) meeting held on April 26, 2010, and that District concealed the IEP document from Parent for approximately two years. No other information was provided by Parent in Student’s complaint.

While Student’s complaint appears to allege that Parent was denied participation in the interim IEP, Student made no allegation that he was denied a FAPE. The complaint provides no facts regarding how a denial of FAPE, if any, might have occurred. Thus, 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. Furthermore, Parent attached the IEP in dispute to the complaint. The Office of Administrative Hearings (OAH) considers the complaint on the face of the document and attachments are not considered in determining the sufficiency of the complaint.

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).

Further, a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. Student's complaint contains no identified resolution or desired remedy. Thus, for this reason also, Student's complaint is found insufficiently pled, as it failed to meet the statutory requirement that parties must state a resolution to the extent known and available to him/her at the time of the filing of the complaint.

However, a parent who is not represented by an attorney may request that 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).
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. The filing of an amended complaint shall restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, the complaint will be dismissed.⁹
6. All dates previously set in this matter are vacated.

⁸ Ed. Code, § 56505.

⁹ Because Student is permitted to file an amended complaint, District's Motion to Dismiss Student's complaint on the basis of insufficiency is denied as moot. District may reintroduce its Motion to Dismiss, and OAH may dismiss Student's complaint on its own motion, if Student fails to file a complaint amended complaint within 14 days of the date of this order, as ordered herein.

7. District's motion to dismiss is denied as moot.

Dated: May 9, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings