

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050982

ORDER GRANTING NOTICE OF
INSUFFICIENCY WITH LEAVE TO
AMEND

On May 23, 2012 Student filed a Due Process Hearing Request¹ (complaint) naming District as respondent. On May 31, 2012, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the complaint is insufficient; however, Student will have leave to amend it.

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 (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 lists six issues, each of which includes a proposed resolution. Although Student’s complaint refers to “additional violations to follow” and to an attachment, no attachment was filed with the complaint. District contends that each of the six claims is insufficient because of factual inadequacy.

As a preliminary matter, Student’s complaint generally fails to allege that he is eligible for special education, under what category of eligibility, if he has an individualized education program (IEP), what the date of his last IEP is, what his unique areas of need are, and what his current IEP placement and related services are. Although he identifies his school of attendance as North High School, his complaint vaguely alludes to home hospital as his current placement without any supporting facts, including when he was placed in home hospital.

Issue One alleges that District staff violated Education Code sections 200 through 220 based on Student’s “disability and home hospital placement.” Student seeks unspecified accommodations from District “while on home hospital as to a FAPE.” Student offers no

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).

other facts, including what Student's disability is, whether he is currently on home hospital, when he was placed on home hospital and for what reason, what accommodations he allegedly requires, or what the violations were and how those violations relate to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child. Issue one is insufficiently pled because it fails to provide District with the required notice of a description of the problem and the facts relating to the problem so that District may meaningfully prepare for and participate in a resolution session, mediation and due process hearing.

Issue Two alleges that District violated Education Code sections 32050 through 32052 by failing to correct or prevent Student from injury due to hazing. Student's proposed resolution includes seeking staff reprimands, compliance with "JROTC policy" by removing students who are named as "hazers," and by removing staff for failing to notify district under "mandating laws." In addition to the lack of facts described above, Issue Two fails to allege any facts that identify a claim under the IDEA relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, including when and where the alleged hazing occurred, and how the alleged hazing impacted Student's access to his education. Issue Two is insufficiently pled because it fails to provide District with the required notice of a description of the problem and the facts relating to the problem so that District may meaningfully prepare for and participate in a resolution session, mediation and due process hearing.

Issue Three alleges that District violated Education Code sections 56346(a) and 56343.5 because District refused to reschedule Student's IEP meeting at his parents' request due to religious/clerical duties. Student's proposed resolution includes "void last IEP request and re-schedule new IEP as to parents request in writing." Student fails to allege specific facts identifying when District made the initial request for an IEP meeting, when Parents requested the change in date, whether a meeting eventually took place, and how District's actions denied Student a FAPE. As such, Issue Three is insufficiently pled because it fails to provide District with the required notice of a description of the problem and the facts relating to the problem so that District may meaningfully prepare for and participate in a resolution session, mediation and due process hearing.

Issue Four alleges that District violated Education Code sections 49063 and 49069 by refusing Parent the right to inspect Student's school records. Issue Four does not allege any facts to support a claim under the IDEA, including when Parents requested inspection of the records, when and what District's response to the request was, and how the District's alleged refusal to provide Parents access to Student's records denied Student a FAPE. As such, Issue Four is insufficiently pled because it fails to provide District with the required notice of a description of the problem and the facts relating to the problem so that District may meaningfully prepare for and participate in a resolution session, mediation and due process hearing.

Issue Five alleges that: a) District violated the IDEA by making changes to Student's program without Parents' consent and b) District refused to hold a resolution hearing as to a

“complaint in 2010.” In addition to the lack of facts described above, Issue Five does not allege any facts that support this claim under the IDEA, including what changes were made by District, when the changes were made and by whom. Additionally, Student’s reference in Issue Five to a “2010 complaint” and resolution session are not supported by any facts that state a present claim relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child. As such, Issue Five is insufficiently pled because it fails to provide District with the required notice of a description of the problem and the facts relating to the problem so that District may meaningfully prepare for and participate in a resolution session, mediation and due process hearing.

Issue Six alleges that District failed to provide Student with an assessment plan “or changes to date” within fifteen days of District “making changes to Student’s IEP or classes.” Student’s proposed resolution seeks copies of all written assessments or changes to his IEP by District from the time he was placed on home/hospital, along with evidence of parental consent. In addition to the factual deficits discussed above, Issue Six does not state enough facts to provide District with notice of this claim, including when and what alleged changes District made to Student’s IEP necessitating an assessment, whether or when Parents requested an assessment or assessments, and in what areas of Student’s need. As such, Issue Six is insufficiently pled because it fails to provide District with the required notice of a description of the problem and the facts relating to the problem so that District may meaningfully prepare for and participate in a resolution session, mediation and due process 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 and supporting facts 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 as to all issues 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

⁸ Ed. Code, § 56505.

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

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 shall be dismissed.

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

Dated: June 4, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings