

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. 2012060652

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 13, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent.

On June 28, 2012, District filed a Notice of Insufficiency (NOI) as to Student's complaint. On July 2, 2012, Student filed 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 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

Student’s complaint alleges background facts and 29 “counts” or issues, some of which are sufficient and some which are insufficient. As discussed below, Issues two through five, seven through 22 and 24 through 29 are sufficiently pled to put District on notice as to the basis of Student’s claims.

As discussed below, with regard to Issues one, six and 23, Student fails to allege enough information to provide an awareness and understanding of the issues forming the basis of the complaint. Therefore, Issues one, six and 23 are insufficient.

Issues one through five relate to an individualized educational program (IEP) meeting on June 14, 2010. Issue one states that the offer of placement and related services made at that IEP denied Student a free appropriate public education (FAPE). However, it fails to specify whether the offer was deficient in terms of the general education placement that was offered, or the related services of speech and language, occupational therapy, group counseling, behavior intervention, and specialized academic instruction that were offered, or all of the above, or in what respects the offered placement and/or services were

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).

inappropriate. Therefore Issue one fails to state sufficient information to provide an awareness and understanding of the issues forming the basis of the complaint.

Issue two, relating also to the June 14, 2010, IEP, claims that District failed to give prior written notice of the proposal made at that meeting. This allegation provides sufficient information to allow District to know how to prepare for the hearing, and how to participate in resolution sessions and mediation.

Issues three through five, relating also to the June 14, 2010, IEP, claim, respectively, that District failed to offer appropriate behavioral strategies, failed to find that prior behavior approaches had been ineffective, and failed to undertake a functional analysis assessment (FAA). These allegations provide sufficient information to allow District to know how to prepare for the hearing, and how to participate in resolution sessions and mediation.

Issues six through 14 relate to an IEP meeting on January 31, 2011. Issue six, like Issue one, states that the offer of placement and related services made at that IEP denied Student a FAPE, however it fails to specify in what respects the offer was deficient . Therefore Issue six fails to allege enough information to provide an awareness and understanding of the issues forming the basis of the complaint.

Issue seven, relating also to the January 31, 2011, IEP, claims that District failed to give prior written notice of the proposal made at that meeting. This allegation provides sufficient information to allow District to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Issues eight through 11, relating also to the January 31, 2011, IEP, claim, respectively, that District failed to offer appropriate behavioral strategies, failed to find that prior behavior approaches had been ineffective, and failed to undertake a FAA. These allegations provide sufficient information to allow District to know how to prepare for the hearing, and how to participate in resolution sessions and mediation.

Issues 12 through 14 allege, respectively, that on or prior to January 31, 2011, District failed to afford parents an opportunity to participate in meetings in which assessments were reviewed, failed to consider parental input, and failed to determine that additional assessment data was warranted, thereby depriving parents of participatory rights. These allegations provide sufficient information to allow District to know how to prepare for the hearing, and how to participate in resolution sessions and mediation.

Issues 15 through 22 relate to an IEP meeting on March 14, 2011. Issue 15 claims that at that IEP, District failed to offer Student a placement at a nonpublic school (NPS), thereby denying him a FAPE. Issue 16 claims that District failed to give prior written notice of this refusal to change Student's placement. Issues 17 through 19 claim, respectively, that District failed to offer appropriate behavioral strategies, failed to find that prior behavior approaches had been ineffective, and failed to undertake a FAA. Issues 20 through 22 allege that on or prior to the March 14, 2011, IEP, District failed to afford parents an opportunity to

participate in meetings in which assessments were reviewed, failed to consider parental input, and failed to determine that additional assessment data was warranted, thereby depriving parents of participatory rights. These allegations all provide sufficient information to allow District to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Issue 23, confusingly, refers back to Issue 14 and states that District failed to give prior written notice of the refusal to change Student's placement "as alleged in Count Fourteen, above." However, Issue 14 does not in fact relate to any refusal to change a placement, but rather to a failure to determine that additional assessment data was warranted. It appears that Issue 23 contains a typographical error in referring back to Issue 14. Therefore it is unclear what proposal or refusal Issue 23 actually references. Thus, Issue 14 fails to allege enough information to provide an awareness and understanding of the issues forming the basis of the complaint.

Issues 24 through 25 relate to IEP meetings on April 26, 2012, May 8, 2012, and May 25, 2012, and claim that at each of those IEP's, District failed to offer Student a placement at a NPS, thereby denying him a FAPE, and failed to give prior written notice of this refusal to change Student's placement. These allegations all provide sufficient information to allow District to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

In sum, Student's background facts and allegations with respect to Issues two through five, seven through 22 and 24 through 29 are sufficiently pled to put District on notice as to the basis of Student's claims. Issues one, six and 23, fail to allege enough information to provide an awareness and understanding of the issues forming the basis of the complaint and are therefore insufficient.

ORDER

1. Issues two through five, seven through 22, and 24 through 29 are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues one, six and 23 are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues two through five, seven through 22, and 24 through 29.

Dated: July 02, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings