

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012110702

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 21, 2012 Parents on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Hemet Unified School District (District) as respondent.

On November 27, 2012, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.

The complaint alleges three issues. In the first issue, Student alleges that the District has denied him a free appropriate public education (FAPE) during the Statute of Limitations time period. Student alleges that the District (a) predetermined his placement; (b) developed vague and inappropriate goals and objectives in IEP's; and (c) offered an inappropriate placement. In the second issue, Student alleges that his parents are not entitled to reimbursement for Independent Education Evaluations (IEE) made by Dr. Melanie Lenington and Joanne Abrassart per an agreement by the District to pay. In the third issue, Student alleges: "Did the parents provide Student with an appropriate placement with the CARD [Center for Autism and Related Disorders] program consisting of 40 hours per week, including supervision, speech and language, occupational therapy and private school?" (Complaint at p. 8.)

In support of these issues, the complaint quotes from an unidentified federal court opinion from August 13, 2009, which upheld an unidentified OAH decision of March 24, 2008, in a matter involving these parties. This is followed by almost two pages of factual allegations, most of which are nothing more than conclusory statements. An example is: "18. The District failed to invite necessary parties to the IEP meetings for Student." (Complaint at p. 6.) In general, Student fails to allege the dates of the various IEP meetings,

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).

what Student's unique needs are and why these needs were not met by each of the specific IEP's, and the reasons why the District actions were not appropriate.

As to the second issue, Student fails to allege any facts to demonstrate why Student is entitled to District funding of an IEE. As to issue three, Student fails to allege any facts to support his claim.

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

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

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.

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.].

Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

As stated above, the complaint fails to allege facts to support Student's claims. Student's factual allegations are contained in paragraphs four through 18. Paragraphs four and five recite quotes from the federal court and OAH decisions in a former case between the parties. Paragraph six contends that, since the federal court decision, there has not been an IEP consented to by parents. In paragraph 15, Student alleges that the District had filed for due process in cases in 2010 and 2012. The remainder of the factual allegations contains conclusory allegations not supported by any specific facts. In general, Student also fails to allege what his unique needs are and how these needs were not met.

Paragraph seven fails to state how the District failed to comply with the federal court orders and for what time period.

In paragraph eight, Student fails to state in what manner the District agreed to fund IEE's and at which specific IEP meetings.

In paragraphs nine and 11, Student fails to identify the specific IEP's in issue, what goals and objectives are being referred to and the reasons these goals and objectives were not appropriate.

In paragraph 10, Student fails to state the specific IEP's being referred to and the manner Student was deprived of a FAPE.

In paragraph 12, Student fails to list the specific IEP meetings.

In paragraph 13, Student fails to allege any facts to support his allegation that IEP meetings were not held timely, including which IEP meetings.

In paragraph 16, Student fails to allege which specific testing materials and assessments were improper and why they were improper. Additionally, Student fails to state how this invalidated the entire assessments.

In paragraph 17, Student fails to allege any facts to support his conclusory statement that assessments to determine Student's level of functioning were out of date. Student must identify the date of the assessment and which specific assessments are involved as well to demonstrate why the tests were out of date.

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).

In paragraph 18, Student fails to specify which necessary parties were not invited to which IEP meetings.

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

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).⁸
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 will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: November 28, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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