

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012110722

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 21, 2012 Student filed a Due Process Hearing Request¹ (complaint) naming the East Side Union High School District (District).

On December 5, 2012, the District 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 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 alleges three claims in his complaint, each of which contains sub-issues. The District contends that Student’s entire complaint is insufficient because it is vague, does not indicate which of Student’s individualized education programs (IEP’s) is at issue, and fails to indicate the specific time frames of each allegation. The District also contends that it was not Student’s local educational agency (LEA) during the entire time frame alleged in the complaint, and that Student fails to indicate that in his complaint. As discussed below, some of Student’s issues are sufficiently alleged while others fail to meet the legal standard for sufficiency.

As an initial observation, the District’s contention that it was not Student’s LEA during the entire time frame covered by the complaint is not a basis for an NOI. Student alleges that he presently attends a District school, and makes allegations covering the last two school years in addition to the present school year. Whether Student was not attending a District school during any of that time is a factual issue in dispute. Whether those facts are true is irrelevant for purposes of determining whether the complaint is sufficiently pled.

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).

In issue one, Student alleges that the District failed to properly assess him from at least 2010 until the present. The District contends that the time frame alleged in this issue is not specific enough to be sufficient. However, Student is bound by a two-year statute of limitation under state and federal law. Student does not allege or provide facts in support of extending the statute of limitations. Therefore, for purposes of this due process hearing, Student's complaint can only encompass the time period for the two years prior to the filing of his complaint on November 21, 2012.

Student's issue one contains five sub-issues contending that the District failed to properly assess him in five different areas. Student contends that the District's psychological assessment administered in 2010 was inadequate because the assessor's report lacked adequate conclusions and recommendations. Student contends that the District should have administered a speech and language assessment to him during the two years prior to the filing of the complaint because such an assessment could have helped determine if his auditory processing deficits were caused by a deficiency in the areas of speech or language. Student also contends that the District should have assessed him in the area of occupational therapy to determine if his alleged difficulty with handwriting is due to motor skills deficits. Based upon the facts alleged in Student's factual introduction to the complaint and information provided in the explanation of issues, these three allegations are specific enough to put the District on notice of Student's contentions and the basis for them.

Student also contends that the District should have assessed him in the area of assistive technology and emotional/social development. However, these two allegations lack the factual basis Student provided in support of the other three assessments. There are little or no facts alleged in Student's complaint that explain why he believes the District should have assessed him in the areas of assistive technology or emotional/social development. These allegations are therefore insufficiently pled.

In issue two, Student alleges that the District failed to design an educational program to meet his unique needs since at least December 2010. Student contends that the programs offered to him, which provided him with placement in general education classrooms with supporting resource specialist services, did not permit Student to fulfill his academic potential. Student then states that his parents believe that Student's educational program was not implemented. It is unclear from this issue whether Student is separately alleging a failure to implement his IEP's, and, if so, which of the IEP's was not implemented.. It is also unclear from the issue or the facts alleged in Student's complaint why his programming was insufficient and what his programming should have contained that the District failed to provide. The complaint does not adequately explain whether Student failed to progress and, if so, the facts supporting a failure to progress. Further, assuming that Student is alleging a failure to implement his IEP, Student fails to state facts supporting this contention and fails to identify which IEP's were not implemented, and which portions of services and/or programming the District failed to provide.

Student also alleges in issue two that he should have been provided a one-on-one aide in the classroom based on observations by teachers and assessors that he responds well to an

aide. Student contends that he needs an aide to make academic progress and to enable him to live independently. However, his complaint fails to provide any discussion of what exactly an aide would assist him with in the classroom. There is no discussion of whether Student is inattentive or unfocused, and no discussion of how or why an aide is necessary in order to enable Student to progress academically or learn to be functionally independent. Therefore, Student's issue two is insufficient as pled in its entirety.

In issue three (inadvertently identified a second time as issue two), Student contends that the District failed to give his parents prior written notice that it was withdrawing services that Student was supposed to receive in his 2012-2013 IEP. However, Student fails to state which of his IEP services or programming was not implemented and when this occurred. This issue is therefore insufficient at pled.

Student also alleges that his parents are Spanish speakers but were not provided Spanish translations of his IEP's during the applicable statute of limitations. This issue is sufficiently pled.

Student also makes a one sentence allegation that "Due to confusion at the time of the IEPs (sic) in 2009, the District failed to give proper notice to Parents about the changes in services to be provided to [Student]." This is the first and only reference in Student's complaint to any failure to implement his IEP in 2009. Aside from the issue that anything that occurred in 2009 is outside the statute of limitations, Student fails to indicate what the changes in Student's IEP were, when the changes occurred, what the confusion in the 2009 IEP's was, or how that confusion resulted in any type of unilateral change in Student's program or services. This issue is insufficient as pled.

Finally, Student contends that the District failed to provide his attorney with all documents the attorney requested. Student states that the District failed to provide logs of services, results of standardized tests, "and so forth." It is unclear which records are encompassed in the statement "and so forth." To the extent that Student contends that his attorney requested, but did not receive logs of services or results of standardized tests for Student, these allegations are adequate. However, Student must specify which other documents the District failed to produce if Student intends this issue to encompass a failure to produce more than the two classes of documents specifically identified.

ORDER

1. Issue one of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii) with regard to the allegations that the District failed to adequately assess, or failed to assess, in the areas of the psychological evaluation, speech and language, and occupational therapy.

2. Issue one of Student's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D) with regard to the allegations that the District should have assessed Student in the areas of assisted technology and emotional/social development.

3. Issue two of Student's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D) with regard to all allegations raised.

4. Issue three of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii) with regard to the allegations that the District failed to provide Student's attorney with copies of Student's logs of service and results of testing and failed to provide Student's parents with Spanish language translations of Student's IEP's.

5. Issue three of Student's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D) with regard to all other allegations.

6. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

7. 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. If Student fails to file a timely amended complaint, the hearing shall proceed only on those issues of Student's complaint found sufficient, as detailed in paragraphs one and four of this Order.

Dated: December 7, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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