

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013090062

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 27, 2013 Student filed a Due Process Hearing Request¹ (complaint) naming the District as the respondent. On September 6, 2013, the San Dieguito Union High School District (District) filed a Notice of Insufficiency (NOI) as to the complaint. On September 11, 2013, the Office of Administrative Hearings (OAH) sustained the District's NOI as to Student's entire complaint, gave Student 14 days to file an amended complaint, and instructed Student how to obtain assistance from an OAH mediator in drafting an amended complaint.

Student requested and was provided assistance from an OAH mediator in drafting an amended complaint, which Student filed on September 30, 2013. On October 1, 2013, the District filed an NOI as to the amended complaint. As discussed below, the District's NOI is sustained in part and overruled in part. Student will be given another opportunity to amend his amended complaint as to those portions deemed insufficient.

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,

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).

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

DISCUSSION

Student’s complaint is divided into two sections. The first section is entitled “history” and purports to discuss the events and factual bases underlying Student’s amended complaint. The history portion of Student’s amended complaint is disjointed, repetitive, disorganized, and almost amounts to a stream of consciousness narrative of Student’s factual bases for the amended complaint. Student discusses a prior settlement between the parties, which was apparently amended approximately six months ago, and appears to allege that the District failed to comply with some of the terms of the original settlement agreement and the later amendment. Student then alleges denials of a free appropriate public education for the

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.].

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).

2013-2014 school year, as well as vague allegations that the District failed to follow proper procedures when it last assessed Student.

However, Student then presents 11 numbered paragraphs in which he presents the specific issues he alleges as violations of his rights. In issue one Student alleges that the District failed to schedule an individualized education program (IEP) meeting for him on or before May 1, 2013, as required by the settlement agreement between the parties. Student alleges that Student and his Parent therefore did not have enough time to develop appropriate goals, research a placement, or work on a transition plan. In the history portion of the amended complaint, Student states that the District delayed holding the IEP meeting until July 2013. However, nowhere in the amended complaint does Student state facts in support of his contention that a delay in scheduling the IEP meeting somehow gave him *less* time, rather than *more* time to prepare for the meeting. Nor does Student allege that the delay someone prevented him from receiving a FAPE. For these reasons, issue one is insufficient as pled in its entirety.

In issue two, Student alleges that the District failed to place the settlement agreement in his school file. Student alleges that this somehow prevented District assessors from conducting appropriate assessments. However, Student fails to state why it was necessary for the assessors to see the settlement agreement in order to assess him, or how the assessments were inappropriate. Although Student alleges that he was denied appropriate educational benefits for the 2013-2014 school year as a result of these allegations, he fails to state what he was denied or how he was impacted by the possible failure of the assessors to review the settlement agreement before assessing him. For these reasons, issue two is insufficiently pled in its entirety.

In issue three, Student alleges that the District prevented his parent from participating in IEP meetings held on July 19 and July 25, 2013. Student claims that the District would not permit Student's parent to participate in IEP discussions, that the District representatives interrupted her, yelled at her, and mistreated her. This issue states enough facts to put the District on notice of the specific allegations and the facts supporting them. Issue three is therefore sufficiently pled.

In issue four, Student contends that the District scheduled assessments for Student in April 2013 but did not inform Student's parent of the dates and times of the assessments. Student further alleges that the District assessors did not communicate with Parent during the assessment process although the assessment plans clearly stated that the assessments would include such communications. Student therefore contends that the District's speech and language assessment is inappropriate. This portion of issue four clearly states the bases of the allegations. Whether the allegations are viable is an issue for hearing.

The second part of issue four is quite confusing. It appears to conflate issues concerning the appropriate amount of speech and language therapy Student should be receiving with issues concerning the type and extent of Student's possible speech and language disabilities. However, Student did not discuss what type of speech and language

disability the District attributes to him or what type of disability he believes he has. There is no discussion in the history portion of the amended complaint that addresses anything specific about Student's need for speech and language therapy, the reasons he needs it, or why he believes he needs more therapy than that offered by the District. The third paragraph of issue four is therefore insufficient as pled because it does not put the District on notice of the issues presented and facts supporting the issues.

In issue five, Student appears to contend that in April 2013, the District failed to assess Student in the area of assistive technology, failed to conduct a second day of a psycho-educational assessment, and failed to conduct two days of a speech and language assessment. Student also alleges that the District failed to keep assessment appointments in April 2013, but, on the other hand, also failed to cancel scheduled appointments. Student then contends that the District improperly accused his parent of not making Student available for assessments. It is totally unclear from the first three paragraphs of issue five what Student is alleging. It is unclear if Student is alleging that the assessments in question were never done, or if he is alleging that they were partially done but not complete, or that they are not appropriate. If Student is alleging that the assessments were not appropriate, he must specifically allege what about the assessments make them inappropriate. Student then alleges that the District unilaterally scheduled and performed an occupational therapy assessment and psycho-educational assessment of him in April 2013. It is unclear from this allegation whether Student is alleging that these assessments were done without his parent agreeing to them by signing an assessment plan. If that is the case, Student must clearly state this in his complaint. For these reasons, issue five is insufficient as alleged in its entirety.

In issue six, Student contends that that the District failed to provide his parent with Student's school records within five business days of her request. Student contends that this failure prevented his parent from being adequately prepared for the IEP meetings convened by the District on July 19 and 25, 2013. This issue is sufficient as pled.

In issue seven, Student contends that the District failed to read the IEP notes at the end of the IEP meetings held in July 2013, and failed to timely provide his mother with a copy of the IEP notes. Student also contends that the IEP notes were altered. Student states his mother was prevented from fully participating in the IEP meeting as a result. This portion of issue seven is sufficient as pled. However, Student further alleges that these allegations resulted in the denial to Student of meaningful educational benefit. Student fails to address in his complaint how he was denied educational benefit by the District's alleged failure to read the IEP notes to his mother, to provide them to her in a timely fashion, or because the IEP notes were allegedly altered. Student's allegation that these procedural violations regarding the IEP notes impacted his ability to receive meaningful educational benefit is not supported by any facts in the amended complaint and therefore is insufficiently pled.

In issue eight, Student alleges that the District unilaterally decided to place Student at a non-public school 45 minutes from home. Student contends that his disabilities prevent him from such a long bus trip. However, it is unclear what Student's original placement was,

it is unclear what the new placement offer is, and it is unclear if the placement was offered in a specific IEP and, if so, the date of the IEP. Additionally, it is totally unclear whether the change in placement was merely proposed in an IEP or whether the District has implemented the change. Student then alleges that per the April 2013 amendment to the parties' October 12, 2012 settlement agreement, the settlement agreement is in force until August 31, 2014. It is unclear what the duration of the settlement agreement has to do with Student's placement. Student gives no facts regarding the specific provisions of the original settlement agreement, does not state what the April 2013 amendment covered, and does not relate the terms of the settlement agreement to his dispute regarding the non-public school located 45 minutes from his home. For these reasons, issue eight is insufficient as written.

In issue nine, Student alleges that the District failed to provide him with 90 minutes of speech and language therapy and a 120 minutes of adapted physical education, pursuant to IEP's that were agreed to and signed in January and March of 2012. However, it is unclear whether Student is alleging that the District has failed to implement these IEP's, or if Student merely is alleging that the District has proposed different duration of services in his July 2013 IEP's and Student believes he needs more services. If Student is contending that the District has failed to provide him with the amount of services that his current IEP provides, Student must state how much services the District is actually providing to him. If Student is contending that a proposed IEP offer of services is not adequate and/or appropriate, he must state why he believes he needs more services than the District has offered. Student also alleges in issue nine that the District has failed to provide assistive technology services and devices to Student as required in the January and March 2012 IEP's. However, Student fails to state what type of assistive technology services and/or devices he was supposed to receive, and when the District stopped providing them. For these reasons, issue nine is insufficient in its entirety.

In issue 10, Student alleges that or if the District failed to implement the October 12, 2012 settlement agreement and thereby denied Student a free appropriate public education, by failing to provide Student with occupational therapy and physical therapy for the week of August 26, 2013. This allegation sufficiently pled. Whether it constitutes a significant failure to implement Student's IEP program is an issue for hearing.

Student also alleges in issue 10 that the District failed to implement specific accommodations in Student's elective class at school to which Student was entitled. This allegation is sufficient as pled.

Finally, Student also alleges in issue 10 that the District brainwashed Student so that Student did not want to be in his Japanese class and that this somehow caused Student to develop "secondary disability behavior." This portion of issue 10 is not comprehensible. Student does not state any facts as to how the District "brainwashed" him. Student does not state what "secondary disability behavior" is or how the District caused it to occur. This portion of issue 10 is insufficient as pled.

In issue 11, Student contends that the District will not allow his parent to communicate with Student's teacher and aide. Student fails to state how this has prevented him from accessing his education or how this prevents his parent from participating in the IEP process. Student also appears to allege that the District has not given him an appropriate seat close enough to his teacher in his language class. Student has failed to allege any specific allegations as to why he needs to sit in a particular area of the classroom, whether his IEP includes a specific accommodation dictating where he is supposed to sit in the classroom, and if and how he has been prevented from meaningfully accessing the curriculum in that particular classroom. For these reasons, issue 11 is insufficient in its entirety.

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

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 Student's parent is encouraged to again contact OAH for assistance if she intends to amend the due process hearing request.

ORDER

1. Issues 3, the first two parts of issue 4, issue 6, and the first two allegations of issue 10 of Student's amended complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1, 2, the third part of issue 4, issues 5, 7, 8, the last allegation of issue 10, and all of issue 11, of Student's amended complaint 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).⁹

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.

⁸ Ed. Code, § 56505.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 3, the first two parts of issue 4, issue 6, and the first two allegations of issue 10 of Student's amended complaint.

6. Unless and until Student files an amended complaint, the present prehearing conference and hearing dates will remain on calendar.

Dated: October 03, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings