

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2016030965

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On March 17, 2016, Parent on behalf of Student filed a Due Process Hearing Request<sup>1</sup> (complaint) with the Office of Administrative Hearings naming Long Beach Unified School District. On March 28, 2016, District filed with OAH a Notice of Insufficiency 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. (20 U.S.C. § 1415(b) & (c).) 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185,

---

<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

*supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

## DISCUSSION

Student's complaint comprises an introductory paragraph followed by three other paragraphs which appear to allege three issues. Student fails to specifically identify what issue(s) he is alleging. The introductory paragraph states that Student is six years old and qualifies for special education under Autism. Student attends a special day program at the William F. Prisk Elementary School. Student contends that he is essentially non-verbal and has considerable sensory issues, which are not detailed, and that his teacher stated that she is concerned with Student's inappropriate behavior such as pushing and bumping peers.

The second paragraph (Issue One) discusses an incident which occurred in September 2015 where Student refused to get on the school bus. Student states that there is a "suspicion" that someone hit Student. Following the incident, Student's mother drove him to and from school. Since Mother no longer has use of a car, Student contends that District "needs to provide [Student] with safe transportation." In his proposed resolutions, Student requests that District provide him with home to school transportation with a one-to-one aide. Thus, it appears that Student is alleging that District has failed to provide Student with safe transportation. Student needs to allege facts demonstrating that Student requires the services of a dedicated aide on the school bus.

The third paragraph (Issue Two) contends that Student has received all ones in his latest report cards while working at a kindergarten level. Student alleges that an October 6, 2015 report by the school psychologist stated that Student requires adult assistance to stay focused. Student contends that he would be more capable if he had an aide to keep him focused and on task. Student's proposed resolution includes that District provide Student with a one-to-one aide for the entire school day. Thus, it appears Student is alleging that District has denied Student a free appropriate public education by failing to provide Student with a one-to-one full-time aide. Student fails to allege facts demonstrating that his lack of focus requires the services of a one-to-one aide.

The fourth and final paragraph (Issue Three) states: "Occupational Therapy could also help in dealing with his sensory and fine motor issues. This needs to be assessed. Without

the appropriate services, [Student] will not have the opportunity to make the meaningful social/emotional progress to which he is entitled and FAPE.” Student requests as part of his proposed resolutions that he be assessed for occupational therapy and receive at least 30 minutes of occupational therapy services for at least 30 minutes per week. Thus, Student is alleging that District has denied him a FAPE by failing to provide an occupational therapy assessment and services.

Student’s complaint alleges three claims in the complaint, which are all insufficiently pled. Student’s complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem as indicated below.

With respect to Issue One, Student fails to demonstrate that District has failed to provide Student with safe transportation or that he requires a one-to-one aide on the school bus.

With respect to Issue two, Student fails to allege facts regarding Student’s behavior issues, the frequency of such behavior, circumstances and surrounding Student’s behaviors and why he requires a one-to-one full-time aide.

With respect to Issue Three, Student contends that he has sensory and fine motor issues but fails to allege any facts to demonstrate that Student does have sensory and fine motor issues.

Therefore, Student’s complaint is not adequately pled as it fails to put the District on notice as to Issues One through Three for hearing.

#### 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).<sup>2</sup>
3. The amended complaint shall comply with the requirements of title 20 U.S.C. 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.

---

<sup>2</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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

DATE: March 29, 2016

DocuSigned by:

*Robert Helfand*

27C19E48831C4E3...

---

ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings