

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

HOLLISTER SCHOOL DISTRICT.

OAH CASE NO. 2010010276

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On January 7, 2010, Parent, on behalf of Student (herein, Student) filed a Due Process Hearing Request¹ (complaint) naming the Hollister School District (District) as the respondent.

On November January 13, 2010, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent is entitled to know the nature of the specific allegations being made against it, such that

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 All statutory citations are to Title 20 United States Code unless otherwise noted.

respondent may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

DISCUSSION

Student's complaint alleges four claims. In issues two and four, Student alleges that the District procedurally violated his rights when it failed to hold an annual individualized education program (IEP) team meeting as required by law in February 2008, and February 2009, respectively. Issues two and four are sufficiently pled to put the District on notice as to the basis of Student's claims contained therein.

In issue three, Student alleges that the District procedurally violated his rights at his August 29, 2008 IEP team meeting because the District failed to invite Student's private school educators to the meeting. This allegation is also sufficiently specific as to put District on notice of the basis of the claim. In issue three, Student also alleges that the District's offer of placement in a general education classroom with resource services four days a week did not meet his needs because he requires a classroom that provides a low student to teacher ratio, which the District's general education classroom did not provide. This allegation is also sufficient to put the District on notice of basis for Student's claim.

However, with regard to issues one and parts of issue three, Student has failed to state sufficient facts supporting these claims and the claims are therefore insufficient. Issue one alleges that the District found Student eligible for special education and related services at an IEP meeting held February 1, 2007, but failed to make an offer of placement and services. Student acknowledges that this IEP meeting is outside the statute of limitations, but states that the District's violations of his rights continued until August 29, 2008, and he makes his claims based upon the alleged continuing violations. However, it is unclear from issue one if there was an IEP in effect for Student during the pertinent time period and, if so, what aspects of the IEP Student contends failed to offer him a free appropriate public education (FAPE). If Student alleges that the District did not develop any IEP for him during this time, he needs to so allege. If his contention is that the District did develop an IEP for him but that aspects of it did not provide him a FAPE, he must indicate which portions of the IEP were deficient and why.

In the first paragraph of issue three, Student also alleges that the District's offer of 60 minutes a week of speech and language therapy was insufficient to meet his needs. This allegation is insufficient because it fails to state why the 60 minutes offered did not meet Student's needs and does not identify the amount of services he required. Paragraph four of issue three contains allegations concerning Student's need for assessment and services in the area of occupational therapy (OT). However, it is unclear from this paragraph whether the District assessed Student in this area, but failed to assess in areas Student believes should have been part of the scope of the assessment, or if the District simply did not administer any type of OT assessment. Also unclear is whether the District's IEP offer included any OT services, or if the OT services included were just not adequate to meet Student's needs. Additionally, the complaint fails to identify with specificity what Student's OT needs are,

how Student has determined those needs, and what Student believes the District should be providing in order for his OT needs to be fully addressed.

As discussed above, a respondent is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. Student's complaint with regard to issue one and the portions of issue three indicated above, fails to provide this notice.

The District also contends that Student's proposed resolution is insufficient. Student requests that his Parent be reimbursed for the costs of his private school placement to date and that the Office of Administrative Hearings order the District to prospectively fund Student's private school placement, along with related services and transportation. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint could be better defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), issues two, four, and the portions of Student's issue three indicated above, are sufficient.
2. Pursuant to section 1415(c)(2)(D), Student's issue one, and the portions of issue three indicated above, are insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.³
4. The amended complaint shall comply with the requirements of 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 Student's issues two, four, and those portions of issue three determined above to be sufficient.

Dated: January 25, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.