

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. 2010030241

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On February 26, 2010, Student, through his Father (collectively referred to as Student) filed a Due Process Hearing Request¹ (complaint) naming the San Dieguito Union High School District (District).

On March 16, 2010, the District timely 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 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

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)

⁴ 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.”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 ALJ.⁷

DISCUSSION

Student alleges five claims in his complaint, which are all insufficiently pled because the issues fail to provide the District with the required description of the problems and the facts relating to the problems.

In Issue One, Student states that the District is not willing to allow him adequate time to retain free or reduced fee legal representation to mediate. As a resolution, Student requests a continuance. Although not stated within the discussion of Issue one, it appears from the first page of the complaint that Student’s Issue one relates to OAH Case No. 2010020166, which the District filed on February 3, 2010, naming Student as the respondent. As the District correctly points out in its NOI, Issue One is merely a request for a continuance. It fails to state why the District’s failure to agree to a continuance has denied Student a free appropriate public education (FAPE).⁸

In Issue Two, Student states that the District has made four offers of FAPE since July 16, 2009, and that the offers were for other public and non-public placements. Student then contends that if the District’s offers of placement were for a non-public school (NPS), the District cannot select the NPS placement. This issue fails to state what the District’s offers were and, more importantly, fails to state facts indicating with what specific portions of the offers Student disagrees and why he believes the offers fail to provide him with a FAPE.

The contentions in Student’s Issue Three appear similar to those in Issue Two. Student contends that the plan to replace his existing placement with a placement in a special day class at a District middle school violates the law and is the same situation that previously caused him to become suicidal when attending elementary school. However, there are no facts detailed in this issue which indicate why the District’s placement offer does not provide Student with a FAPE and what it is about the placement offer that would put Student at risk.

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).

⁸ In any case, OAH granted Student’s request for continuance in OAH Case No. 2010020166 on March 2, 2010.

Student's Issue Four is likewise unclear. Student states that a non-public agency conducted an assessment at his home and at his current placement, but it is uncertain what the connection is between this assessment and any denial of FAPE to Student. Student then states that the District hired a Dr. Kleber to create a plan to replace Student's present placement but that at an individualized education program (IEP) team meeting held August 29, 2009, Dr. Kleber stated that he could not fashion a behavior program at school and home that would replace essential services for Student. Student contends that Dr. Kleber further stated that Student was vulnerable and that he required a conservative transition plan. Student then states that the District's attorney informed the IEP team that the District could not meet Student's social and emotional needs at the time. However, there is no connection between these facts and what the District's IEP offer was and why that offer does not provide Student with a FAPE. Nor is there any specific discussion as to what Student believes he requires educationally in order for the District to meet his FAPE needs.

In Issue Five, Student contends that the District has refused to pay his transportation costs between his present NPS and the Linda-Mood Bell center. However, Student fails to state whether the District is funding his services with Linda-Mood Bell, if his IEP provides for the District to fund the services, and/or give any basis for his contention that the District is required to provide him with transportation to the center.

ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁹
3. 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.
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.

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

6. Pursuant to Education Code, section 56505, subdivision (e)(6), upon the request of a parent who is not represented by an attorney, OAH shall provide a mediator to assist the parent in identifying the issues and the proposed resolutions of the issues. Should Student's Parent desire the assistance of a mediator, Parent must contact OAH at (916) 263-0880 immediately upon receipt of this Order to request assistance in formulating the issues in Student's complaint.

Dated: March 18, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings