

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL
DISTRICT; FRANK LANTERMAN
REGIONAL CENTER

OAH CASE NO. 2010050350

ORDER PARTIALLY GRANTING NOI

On May 10, 2010 Parent on behalf of Student (Student) filed a Due Process Hearing Request]¹ (complaint) naming Glendale Unified School District (District) and Frank Lanterman Regional Center as Respondents. On May 17, 2010, District filed a Notice of Insufficiency (NOI) as to Student's complaint. The NOI is denied as to Student's Issue Number 1, and granted as to Issues 2, 3 and 4.

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’s complaint includes four issues. Student alleges that 1) District has denied Student FAPE by failing to implement Student’s Individual Education Plan (IEP) in the area of physical education for the past two years; 2) Student would benefit from a tutor; 3) Student requires speech therapy; and 4) Student requires the services of a translator. Student has offered proposed resolutions to each issue.

Here, Issue Number One refers to Student’s IEP and alleges that the District’s failure to provide physical education occurred within the past two years. The IDEA does not require that a person or entity filing a claim plead facts with particularity. A person is required to file a short and plain statement of the claim and the grounds upon which it rests. The claim should answer the questions who (i.e. the district), what (what Student is claiming), how (what in general are the salient facts regarding Student’s claim/the grounds) and when (time frame). Issue Number 1 is sufficiently pleaded to give District notice under section 1415(c)(2)(D).

However, Issue Numbers Two, Three and Four are insufficient. The Complaint is ambiguous and does not tie any of these three claims to Student’s IEP. For example, the complaint is unclear as to whether Student is alleging that District failed to assess and identify Student’s needs in the areas of tutoring, speech and language and translation, whether Student’s IEP provides for those services and District has failed to implement Student’s IEP in those areas and during what timeframe, or whether Student is requesting those services for the first time. District is entitled to know facts that form 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 District may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing.

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).

At the parent's request, a mediator can be appointed to assist a Student who does not have an attorney in identifying issues and proposed resolutions for hearing. (Ed. Code §56505, subd. (e)(6)). If Student's parent would like the services of a mediator to assist it in this matter, parent should make that request in writing to OAH.

ORDER

1. As to Issue Number One, District's NOI is denied.
2. As to Issue Numbers Two, Three and Four, District's NOI is granted. 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). The filing of an amended complaint will restart the applicable timelines for a due process hearing.
 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 due process hearing will proceed on Issue Number One.
 5. All dates previously set in this matter shall remain.

Dated: May 24, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings