

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010060361

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 09, 2010, Margaret Broussard, Attorney at Law, filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH) on behalf of Student, naming Elk Grove Unified School District (District). On June 24, 2010, Cathy Holmes, Attorney at Law, filed a Notice of Insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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.⁴ These requirements prevent vague and confusing complaints, and promote fairness by providing the

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 The District titled the pleading as a “. . . Partial Notice of Insufficiency,” objecting to the second issue in Student's complaint. However, there is no legal authority for OAH to only review a portion of a complaint for legal sufficiency, so this determination will address all of the issues in the complaint.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁸

DISCUSSION

Student alleges two issues in his complaint, one of which is sufficient and one which is insufficient. The issues are discussed below.

The first issue challenges the District’s offer of FAPE for the 2010-2011 school year. Student alleges that the District failed to make appropriate and specific offers of speech and language services, failed to promote Student to fourth grade, failed to offer appropriate behavior intervention services, and failed make an appropriately trained aide available throughout the school day to assist student. The facts contained in the complaint are sufficiently pled to put the District on notice as to the basis of Student’s claim.

With regard to the second issue, Student claims that his parents should be reimbursed for an independent educational evaluation (IEE) they obtained from Dr. Maria Moleski after they disagreed with previous District assessments completed in March 2010 as part of the District’s triennial assessment of Student. The first two-and-one-half pages of the complaint state facts in support of the first issue. However, Dr. Moleski is never mentioned until the second issue is stated, and there is no information as to her area of specialization, or which district assessment or assessments were challenged by Parents which led them to obtain Dr. Moleski’s services. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

ORDER

1. Issue One of Student's complaint is sufficient under section 1415(b)(7)(A)(ii).
2. Issue Two of Student's complaint is insufficiently pled under section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁹
4. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed no 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 Issue One in Student's complaint.

Dated: July 6, 2010

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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