

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HUNTINGTON BEACH CITY SCHOOL
DISTRICT.

OAH CASE NO. 2010080813

ORDER PARTIALLY GRANTING
DISTRICT'S NOTICE OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 24, 2010 Student filed a Due Process Complaint¹ (complaint) naming Huntington Beach City School District (District). On September 8, 2010 District filed a timely Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is partially granted with leave to amend.

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 alleges three claims, some of which are sufficient and some which are insufficient. Student alleges that District denied Student FAPE by 1) failing to assess Student for eligibility during the 2008/2009 and 2009/2010 school year through April 16, 2010; 2) by allowing District staff to treat Student in an inappropriate and defamatory manner in the 2008/2009 school year, and 3) by failing to place Student in a smaller classroom in the 2009/2010 school year. Student proposes several resolutions including compensatory relief and prospective placement in a non-public private school.

In the first issue, Student alleges that District failed to find Student eligible for special education for the 2008/2009 and 2009/2010 school years and that Student was finally found eligible for special education as “other health impairment” on April 16, 2010, after District considered a private assessment provided by Student’s parents. The facts alleged in Student’s first issue are sufficient to put District on notice of the claims raised, and therefore the first issue is sufficient.

Student’s second issue alleges that, during the 2008/2009 school year and before Student was found eligible, District staff acted inappropriately by singling student out and labeling him as a “troublemaker” in a defamatory way, and by verbally abusing Student. Student contends that District’s conduct impeded Student’s ability to receive an education without alleging more specific facts. District contends that the second issue does not raise FAPE issues but, instead, is framed as a tort claim that does not fall within IDEA. Student’s second claim is insufficient because the facts alleged are insufficient to establish the nature of the problem as it relates to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

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).

Student's third issue alleges that District failed to appropriately educate Student for several school years and, as a result, District's offer of placement in a general education setting in Student's April 2010 and June 2010 IEPs was inappropriate. Student seeks placement on a smaller campus with a smaller student/teacher ratio. District contends that the complaint fails to state facts that establish why Student could not be educated in a general education setting. District also contends that, because Student is no longer a Student of District after June 16, 2010, Student's claim for inappropriate placement is limited to the time period that District was the responsible local area agency (LEA). Student's third issue states sufficient facts to put District on notice of Student's claims relating to placement during the time period that District was the responsible LEA.

ORDER

1. Issues one and three of Student's complaint are 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 may file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸
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 Issues one and three of Student's complaint.

Dated: September 13, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.