

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. 2010090922

ORDER DETERMINING PARTIAL
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 24, 2010 Parents on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming District. On October 11, 2010, District filed a timely Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is granted in part and denied in part.

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 identifies three general issues relating to his April 28, 2010 and May 21, 2010 IEP. Issues one and two, each with five subparts, allege numerous substantive violations of FAPE with respect to the 2010 extended school year (ESY) and the 2010-2011 school year, respectively; issue three alleges a procedural violation that is not at issue in this NOI.

District’s NOI challenges only a portion of Student’s complaint, specifically issues 1(a) and 2 (b), to the extent Student claims that District failed to provide related services in the areas of occupational therapy, physical therapy, and speech and language therapy; issues 1(b) and 2(c), which allege that District failed to provide Student with an appropriate curriculum; and issues 1(e) and 2(e) which allege that District failed to provide student physical therapy equipment.

As to issues 1(a) and 2(b), and 1(e) and 2(e), Student’s complaint alleges: that he is eligible for special education under the qualifying condition of orthopedically impaired, with a secondary qualifying condition of visually impaired; that he has cerebral palsy, is non-ambulatory, and does not have full control of his hands and arms; that he underwent an independent psychoeducational assessment during the 2009-2010 school year; that, as part of the psychoeducational assessment, Student was evaluated in the areas of vision, augmentative communication, and assistive technology; that he underwent an independent education evaluation in the areas of assistive technology and augmentative communication; and that recommendations for services were made as a result of both assessments. Student claims that his May 21, 2010 IEP failed to provide physical therapy equipment or assistive technology equipment, and failed to offer Student related services, including in physical therapy, occupational therapy, and speech and language services for the 2010 ESY and school year 2010-11. Student’s complaint offers several proposed resolutions.

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).

Issues 1(e) and 2(e) relating to physical therapy equipment are sufficiently pled. However, as to issues 1(a) and 2(b) regarding related services in speech and language, Student has alleged no specific facts that establish that Student has a unique need requiring speech and language services or when or how District allegedly denied Student a FAPE in the area of speech and language services. Therefore, as to issues 1(a) and 2(b) specifically relating to speech and language services, the complaint is insufficient. The remainder of issues 1(a) and 2(b), relating to physical therapy and occupational therapy, are sufficient.

Similarly, issues 1(b) and 2(c), which allege that District failed to provide Student with an appropriate curriculum for 2010 ESY and the 2010-11 school year, are insufficient. Student has alleged that District failed to establish appropriate goals in physical therapy in his May 21, 2010 IEP, a claim District does not challenge in its NOI. Student also alleges that District offered 600 minutes per week of home/hospital instruction for 2010 ESY and 2010-11 school year. Student's complaint includes Parents' Addendum to the IEP dated April 28, 2010, which consists of Parents' proposed changes to the April 28, 2010 and May 21, 2010 IEP. However, Student has alleged no facts, including in the Parents' Addendum, as to what curriculum was offered, what portions of the offered curriculum were deficient, why they were deficient or any other facts establishing what District failed to do in connection with Student's curriculum.

ORDER

1. Issues 1(e) and 2(e) of Student's complaint are sufficient under section 1415(b)(7)(A)(ii). District's NOI is denied as to these issues.
2. Issues 1(a) and 2(b) of Student's complaint are insufficiently pled under section 1415(c)(2)(D) only as to Student's claim for speech and language services. District's NOI is partially granted as to these issues as limited.
3. Issues 1(b) and 2(c) of Student's complaint are insufficiently pled under section 1415(c)(2)(D). District's NOI is granted as to these issues.
4. Issues 1(c) and 1(d), 2(a), 2(d), and issue 3, are sufficient.
5. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸ 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.

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

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on issues 1(c) 1(d), 1(e), 2(a), 2(d), 2(e), 3, and on issues 1(a) and 2(b) exclusive of Student's claim for speech and language services.

Dated: October 18, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings