

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010026

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 3, 2011, attorney Kathleen Loyer, on behalf of Student, filed a filed a Due Process Hearing Request¹ (complaint) naming Newport-Mesa Unified School District (District) with the Office of Administrative Hearings (OAH). On January 12, 2011, the District filed an Notice of Insufficiency concerning the complaint. On January 19, 2011, OAH found the complaint insufficiently pled.

On February 2, 2011, Student filed his first amended complaint. On February 14, 2011, the District filed a NOI concerning the first amended 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 title 20 United States Code section 1415(b)(7)(A).

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 As it did with the NOI concerning the initial complaint, the District included a motion to dismiss specific portions of the first amended complaint as being beyond the jurisdiction of OAH. Because the first amended complaint is also insufficiently pled, this motion to dismiss is moot.

³ 20 U.S.C. § 1415(b) & (c).

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 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 Individuals with Disabilities Education Act (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 Administrative Law Judge.⁸

DISCUSSION

Student’s complaint contains a lengthy, but very general description of his history as a student with special needs from 2005 to the fall of 2010. Although various alleged violations of Student’s rights are claimed during this period of time, of particular note is the allegation that Student filed a due process complaint in March 2009 that was subsequently settled by way of a formal settlement agreement. The date of the settlement agreement is not contained in the complaint, although Student claims that there was an individualized education program (IEP) agreed to by Parents in September 2009. Student does discuss an IEP of October 10,

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

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).

2010, in these facts, but as with the discussion of the IEP of October 10, 2010, he does not provide details about the provisions of these IEPs. In addition, the statement of new facts alleged in pages 13 through 16 of the amended complaint is confusing because it appears that Student is attending both special education classes and general education classes, and teachers in those classes committed acts that allegedly violated the IDEA, but it is unclear whether specific acts were committed by general education or special education teachers because names are not given.

In his complaint, Student makes three claims, which are all insufficiently pled as discussed both above and below.⁹ In Issue 1, Student claims that the District violated the IDEA, section 504 of the Rehabilitation Act (Section 504), and section 1983 of the Civil Rights Act of 1973 from September 2009 to the present because it failed to provide him with “appropriate levels of support” in the areas of speech and language services, occupational therapy and appropriate behavior interventions. Neither the preceding general statement of facts, nor the few sentences following this issue are sufficient to provide the District with information about what levels of support he required in each of these areas, and how the District failed to provide him with these levels of support. Accordingly, this claim is insufficiently pled.

In Issue 2, Student alleges that the District again violated his rights pursuant to Section 504 and the Civil Rights Act, as well as the IDEA, in that the District failed to assess him in the areas of sensory integration and behavior, which were areas of need. However, Student fails to provide information in both the general statement of facts and the brief discussion of facts that follow this statement of issue that establish a need for assessment in these areas. There is no allegation that any request for assessment was ever made in these areas. As with the first issue, this claim is also insufficiently pled.

Student alleges, in his third issue (entitled Issue 4), that the District once again violated his rights pursuant to Section 504 and the Civil Rights Act, as well as the IDEA, because it has failed to provide him with appropriate behavior intervention services. Student then claims that the District dropped “ABA services.”¹⁰ There is nothing in the general statement of facts, nor the supporting facts for this specific claim that describe a date or circumstances which would provide the District with notice that ABA services were required under one or more IEPs governing the time periods covered by this complaint, and that these services were then subsequently withdrawn. Again, as with the other issues, this claim is insufficiently pled.

⁹ In both the original complaint and the first amended complaint, the issues are numbered sequentially “1,” “2,” and “4.” There is no Issue “3.”

¹⁰ ABA refers to Applied Behavioral Analysis, a program of treatment for children who have autistic-like behaviors.

Student describes incidents over several years that precede the two year statute of limitations for filing IDEA claims. Many of these claims may have been settled by a settlement agreement that apparently resolved a complaint filed in March 2009. Failure to provide the date of this settlement agreement and its terms, and failure to provide the terms and dates of subsequent IEPs flaws the complaint. Student should consider structuring his complaint to state each issue and supporting facts for each issue separately.

Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹¹
3. The amended complaint shall comply with the requirements of title 20 United States Code 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.

Dated: February 17, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

¹¹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.