

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011030584

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 9, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming the San Jose Unified School District (District).

On March 21, 2011, the District timely filed a filed a Notice of Insufficiency (NOI) as to Student's complaint.

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 Title 20 United States Code 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

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).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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 Administrative Law Judge.⁷

DISCUSSION

Student’s complaint, which his mother filed in pro per, contains five claims or allegations. The District challenges the entirety of the complaint, contending that the complaint as a whole fails to meet the minimal standards for due process complaints as described above. As will be elaborated below, while some of the District’s criticisms of Student’s complaint are well-taken, others fail to persuasively demonstrate that the allegation at issue is legally insufficient.

Student’s complaint contains five issues. In issue one, Student contends that his present placement at the Allen school is inappropriate for a child such as Student who suffers from Tourette’s syndrome and anxiety. Student states that his mental and emotional health has suffered since enrolling at this school because his classroom is uncontrollable and noisy, causing him anxiety and prohibiting him from learning. The District contends that this issue is insufficient because it fails to describe the services and placement offered, fails to state why the services and placement are inappropriate, and fails to state a time frame for the alleged violation. The issue, however, meets minimal standards because it states specifically that Student believes his classroom placement is inappropriate due to the noisy and

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

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).

uncontrollable environment. Student does not take issue with any of his services so the fact that they are not described is immaterial to an analysis of whether issue one is sufficient. As to the timeframe, Student specifically states that he contends that his problems have arisen since he enrolled at Allen. Although that date is not given, since a District school is at issue, the District has access to when Student enrolled at Allen. It suffers no prejudice by Student's failure to specify a date entirely within the District's knowledge. Issue one is therefore sufficient.

In issue two, Student states that the District has failed to resolve issues with his unsigned individualized education program (IEP) for over a year. He states that each meeting (presumably, each IEP meeting) has resulted in further delay and with increased new issues arising. Student also contends that the District has refused to provide dates on which his mother can attend the meetings. The District is correct that the majority of this issue is insufficient because Student fails to specify which issues the District has failed to resolve and which are the new issues that have arisen, leaving the District without a basis of knowledge of exactly what Student believes to be the problem with the IEP process. The first portion of issue two is therefore insufficient. However, the second portion specifically contends that the District has refused to provide meeting dates that Student's mother can attend. This issue is specific and sufficient as stated. To the extent that no specific time frame is given, the complaint is interpreted to cover the two-year statute of limitations period prior to the date Student filed his complaint.

In issue three, Student requests the removal of District employee Ellen Sykes from his IEP team because he contends that she allows false and untrue information to be placed in the notes to his IEP's. Student does not state in which IEP's this has occurred, what the false information is, or how the information has resulted in the denial to him of a free appropriate public education (FAPE). The issue is, in fact, couched as a resolution. This issue is therefore insufficient in its entirety.

As pointed out by the District, Student's issue four appears to re-state the same problem addressed in issue three: that misleading, misdocumented (sic), inaccurate, and wrong statements have been placed into documentation and IEP notes. Student again fails to describe what the misinformation is, the IEP into which it has placed, and to what extent and how his rights have been violated by the misinformation. Issue four is insufficient in its entirety.

In issue five, Student contends that the District has violated his rights by refusing to accept the recommendations in an independent educational evaluation which Student asserts was performed by a psychologist chosen by the District. Student also contends that he does not believe that any further testing of him is warranted. The District contends that this issue is insufficient because Student does not state what the recommendations in contention are and does not state why failing to follow them denied him a FAPE. The District is correct that this issue fails to give it enough information to mount a defense against it. Student does not state whether the District has a copy of the evaluation in question or whether the evaluation was discussed at an IEP meeting. It is impossible to know if the District is aware

of the specific recommendations made. Student does not state what the recommendations are, if the District has declined to follow all of them, and why failing to follow the recommendations denies him a FAPE. The District is therefore correct that this issue is insufficient as written.

The District also contends that Student's resolutions are insufficient because they confusing and have no nexus to the stated issues. The District also contends that many of the requested remedies have no legal basis. However, the legal standard for resolutions as it pertains to a notice of insufficiency is only that the complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) There is no requirement that there be a legal basis for the resolutions for them to pass muster under a notice of insufficiency. To the extent that Student requests remedies that are not permitted under the law or are outside the jurisdiction of the Office of Administrative Hearings, the District may either address the issue by means of a motion to dismiss, or may present its arguments to the administrative law judge for the prehearing conference. Student here has stated proposed resolutions to the extent known and available to him at this time. They therefore meet the statutory requirements and are sufficient to survive an NOI.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. Student's mother may either contact OAH by telephone or in writing. The telephone number for OAH in Sacramento is (916) 263-0880.

ORDER

1. Issue one of Student's complaint, and the second part of issue two, which states that the District has failed to set IEP meetings on dates his mother can attend, are sufficiently pled as written under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. The first part of issue two of Student's complaint, in which he states that the District has failed to resolve unspecified issues in his unsigned IEP, and issues 3, 4, and 5, are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
3. Student's resolutions are sufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii)(IV).

⁸ Ed. Code, § 56505.

4. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹

5. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on issue one and the second part of issue 2 of Student's complaint.

6. If Student's mother wishes assistance from an OAH mediator in formulating the allegations of the amended complaint, she may either write to OAH in Sacramento or telephone OAH at the number indicated above.

Dated: March 28, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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