

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011041056

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 29, 2011 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Hemet Unified School District (District).

On May 4, 2011, District 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 alleges two claims in the complaint, which are all insufficiently pled. As discussed below, the complaint fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. Further, Student’s complaint fails to state remedies which are within OAH jurisdiction. Generally, Student’s statements of issues are unintelligible.

With respect to Issue One, Student has failed to use complete sentences. Student has named a series of documents which commence in 2006, and concludes with “the requests for assistive technology to help student complete tasks, understand basic knowledge words in words grouping, math skills, arts and grafting, spread sheets, word processing and typing.” Student fails to specifically identify what the District did or failed to do, why Student required such action, and what Student wants the District to do now.

Further, Student’s reference to documents as far back as 2006, are clearly beyond the statute of limitations, and Student has included no factual allegations or legal reference to support a legal exception to the statute of limitations.

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).

With respect to Issue Two, Student apparently has three sub-issues. First, Student indicates that L. Alvinzo did and still detains Student a FAPE by not providing a safe involvement to learn, did not replace in Student Schedule (sic). The allegation does not indicate when Student was allegedly denied a FAPE, or include a factual basis for how Student was denied a FAPE. Second, Student indicates that L. Alvizo, J. Edwards, and R. Summers referred to Student as an African-American as stated in all IEP's since August 29, 2003. Student fails to indicate how this apparent ethnic reference denies Student a FAPE or violates the Individuals with Disabilities Education Act. Student includes specific named individuals, but does not indicate how any of these individuals are connected to any alleged denial of FAPE. Further, Student's reference to IEP documents as early as 2003, are not supported as an exception to the statute of limitations. Third, Student indicates that L. Albizio did not read any Special Education information on Student to include in items #8 through #60, and all IEP Request, Show for meetings, follow the guidelines for a FAPE and the following items: #61 through #109, not receiving a copy of IEP 09/09/2010 to submit to OAH (sic). Again, this makes little sense. While Student's allegation appears to be a claim that the District failed to provide Parent with procedural protections, it is too compound and confusing to completely understand. Further, the contention is not supported by any factual information other than reference to documents.⁸

It is also noted that Student has included what the District appropriately describes as a "mismatch" of citations and legal references, in which most do not contain any understandable connection to Student's complaint. As example, Student makes the following statement, "25) Provision of a FAPE in the least restrictive environment," yet there is no mention of least restrictive environment in the entire complaint.

Lastly, Student's requested remedy for both issues is, "State's there is no sufficient information. Stop monies from State to HUSD. Follow the IEP and Take Action." (sic). A 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).) The proposed resolution stated in Student's complaint is not well-defined. Again, Student has failed to use complete sentences in expressing his requests for remedies. The only clear request is to stop funding HUSD, which is not within the jurisdiction of OAH. Student has not stated the specific areas of remedy he desires in order to allow the District to consider his requests.

MEDIATOR ASSISTANCE IS AVAILABLE TO PARENT

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁹ Parent is encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

⁸ It is noted that Student has included some 124 pages of documents, however they are voluminous and scattered.

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).¹⁰
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: May 09, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

9 Ed. Code, § 56505.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.