

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011061010

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 21, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Lincoln Unified School District (District).

On June 30, 2011, the District timely 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 contains five problems or issues. The District contends that all are insufficiently pled because Student fails to provide enough facts, including specific dates when alleged incidents occurred, to allow the District to properly respond or otherwise defend against the complaint.

In issue one, Student contends that the manifestation determination hearing the District held for him on May 31, 2011, was improper because all required members of Student’s individualized education program (IEP) team were not present. This issue is specific as to the time the incident allegedly occurred as well as to the scope of Student’s allegations. It is therefore sufficiently pled.

In issue two, Student contends that the District failed to update his records after an IEP team meeting held May 12, 2011, to reflect that he also qualified for special education and related services under the category of emotional disturbance, and possibly other health impaired. This issue is also specific as to time and scope of the allegations and is sufficiently pled.

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).

In issue three, Student contends that his IEP and behavior support plan (BSP) are in a state compliance issue. It is unclear what Student means by this allegation. Student also contends that his IEP and BSP do not match his proper IEP diagnosis, his evaluations, or recommendations in his functional behavior assessment. However, in this issue, Student fails to explain what his IEP and BSP state and why he disagrees with their content. He also fails to state what recommendations were made for him in his functional behavior assessment, which recommendations were not followed, and why he believes that the failure to follow the recommendations denied him a free appropriate public education. Issue three is therefore insufficiently pled.

In issue four, Student states that District staff acted unprofessionally and violated his father's parental rights by failing to provide records requested by Student's father. However, Student fails to state when the request was made, to which District staff the request was made, which records Student's father requested, which records were never provided, and why the failure to provide the records prevented Student's father from participating in Student's IEP process. Issue four is therefore insufficiently pled.

Student's issue five was dismissed in its entirety by OAH in a separate order. Student's allegations that the District's expulsion of him was discriminatory and a violation of Student's right to an equal and fair education are beyond the jurisdiction of OAH. Therefore, the District's contention that issue five is insufficiently pled is moot.

MEDIATOR ASSISTANCE FOR PRO PER 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 father may contact OAH by letter or by calling **(916) 263-0880** and making an oral request if he wants to request the assistance of an OAH mediator is developing his amended complaint.

ORDER

1. Issues one and two of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues three and four of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

⁸ Ed. Code, § 56505.

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

4. 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 Issues one and two of Student's complaint.

6. If Student's father wishes to request the assistance of an OAH mediator in formulating the issues in his amended complaint, he should either write to OAH or make an oral request by calling (916) 263-0880.

Dated: July 6, 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.