

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLUMAS UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011120543

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 16, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming the Plumas Unified School District (District).

On December 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 Title 20 U.S.C. § 1415(b) & (c).

³ Title 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

For the following reasons, Student’s complaint, which contains 13 issues, is insufficient in its entirety.

DISCUSSION

In issue one, Student merely states “child find” and cites to the Education Code sections addressing a school district’s duty to search for and locate children in the district with disabilities. However, Student fails to state how the District in this case failed in its statutory duties as to Student with regard to its child find obligations.

In issue two, Student states “failure to assess, including triennial.” However, Student fails to state what time period is at issue, and which assessments the District failed to administer.

In issue three, Student alleges “failure to comply with IEP contents.” However, Student fails to state which of his individualized education plans (IEP’s) was deficient and what exactly the IEP or IEP’s failed to include that is mandated by statute.

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 four, Student alleges “no transition plan or services.” Student fails to state which IEP he is contending failed to include a transition plan or services.

In issue five, Student states “placement-LRE.” Student fails to state which of his IEP’s he is contesting, and, specifically, what placement he contests and why he believes it was not the least restrictive environment for him.

In issue six, Student state “no meeting state standards.” Student does not indicate what portion of his educational placement, services, or program failed to meet state standards and why it failed to meet those standards.

In issue seven, Student states “access to language mode peers/roles modes.” It is unclear what exactly Student means by this allegation. To the extent that Student is contending that a proposed District placement failed to provide him with access peers or role models, Student needs to clarify what he means and state which IEP failed to provide this access.

In issue eight, Student states “access to full educational processes and opportunities.” Again, Student fails to state to which IEP or IEP’s he is referring. He also fails to identify the educational processes and opportunities to which he contends he was denied access.

In issue nine, Student states “failure to comply with settlement agreement.” Student fails to identify the settlement agreement at issue, fails to state how the District failed to comply with it, and fails to state how he was denied a free appropriate public education (FAPE) by the District’s actions.

In issue 10, Student states “lack of reading/writing/math instruction and materials.” Again, Student fails to state which IEP failed to provide him with this type of instruction and why he needed it in order to obtain a FAPE.

In issue 11, Student states “no access or assessment of assistive technology.” Student fails to state if he is referencing an IEP and, if so, to which IEP he is referring. He also neglects to indicate what type of assistive technology he requires and why he requires it.

In issue 12, Student states “speech, language, hearing not being addressed.” Again, Student fails to indicate which of his IEP’s fails to address these areas and why he needs them to be addressed in order to receive a FAPE.

Finally, in issue 13, Student states “low incidence needs are not being addressed.” As in all his issues, Student fails to identify the IEP or IEP’s at issue. He also neglects to state what his low incidence needs are and how, exactly, the District is failing to address them.

Therefore, Student’s complaint is insufficiently pled in its entirety because it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem so that the District can adequately respond to Student’s allegations.

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 Student's parent is encouraged to contact OAH for assistance if she intends to amend Student's due process hearing request. If Student's parent wishes to request the assistance of an OAH mediator, she may either contact OAH by telephone at (916) 263-0880, or she may write to OAH at OAH's office in Sacramento with her request for assistance.

ORDER

1. Student's complaint is insufficiently pled in its entirety under section title 20 United States Code section 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).⁹
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. If Student's parent wishes to request the assistance of an OAH mediator, she should contact OAH as detailed above.
6. All dates previously set in this matter are vacated.

Dated: January 3, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁸ Ed. Code, § 56505.

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