

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. 2012010600

ORDER DENYING NOTICE OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 20, 2012 Student filed a Due Process Hearing Request¹ (complaint) naming District. On January 26, 2012, District filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is denied.

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

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).

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

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 includes a copy of his May 12, 2011 IEP, raises five issues and includes proposed resolutions.

Issue one alleges that District denied Student a FAPE from December 2011 through the date of filing of the complaint by denying him readmission to a District school following an alleged disciplinary expulsion in 2011. District argues that OAH has no jurisdiction to determine issues relating to Student’s re-admission after expulsion. District also argues that issue one does not identify any dispute with an IEP or offer of FAPE by District. As discussed above, the purpose of an NOI is to determine the sufficiency of a pleading, and not the merits of the complaint or whether OAH has jurisdiction over issues. Here, Student alleges that District refused to readmit him or return him to full-time status, and failed to provide services or interim services, which relates to the issue of placement. As such, issue one is sufficiently pleaded to put District on notice of the issue to respond to the complaint, and to prepare for a resolution session, mediation and hearing.

Issue two alleges that District denied Student a FAPE by failing to comply with a settlement agreement that provided for assessments, goals and objectives, progress reports, and residency. Student’s proposed resolution seeks compensatory services including academic tutoring and counseling. Student’s complaint contains a two page exhibit that appears to be a summary of some of the terms of the agreement and a chronology relating to Student’s disciplinary proceedings. District argues that issue two does not identify any

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).

dispute with an IEP or offer of FAPE from the District, and that OAH has no jurisdiction over issues that purportedly gave rise to the alleged settlement agreement. As discussed above, the purpose of an NOI is limited to determining the sufficiency of the pleading and is not a determination of the merits or jurisdiction. Here, Student's issue two is sufficiently pleaded to put District on notice of the issue to respond to the complaint, and to prepare for a resolution session, mediation and hearing.

Issue three alleges that District denied Student a FAPE from and after December 2011 by failing to offer him an appropriate placement in the least restrictive environment. Specifically, Student alleges that District inappropriately offered him placement in a non-public school or at a "County One School" following a disciplinary expulsion. Student's remedy seeks reinstatement at a District public school. District argues that Student's allegations of harassment and retaliation referred to in this issue are outside of OAH's jurisdiction. As discussed above, an NOI only addresses the sufficiency of the pleading, and not the merits of the complaint. Issue three is sufficiently pleaded to respond to the complaint, and put District on notice of the issue to prepare for a resolution session, mediation and hearing.

Issue four alleges that District "breached" Student's 2010-11 IEP agreement by failing to provide Student with "any relevant or meaningful special education services" to address all of Student's unique needs. Although Student does not specify in this issue what services District failed to offer or provide, his proposed resolution to issue four seeks academic tutoring services and tuition at Fusion Academy. In addition, issue two refers to counseling services relating to Student's behavioral issues. Therefore, when the complaint is read in its entirety, issue four is sufficiently pleaded for District to respond to the complaint and to prepare for a resolution session, mediation and hearing. However, if Student intended that District failed to offer related services other than tutoring and counseling, he must amend his complaint to include those other services.

Issue five alleges that District procedurally violated the IDEA during the 2010-11 and 2011-12 school years by failing to provide to Student's parents records, tapes, MP3 recordings and emails from the June 24 and June 27, 2011 administrative proceeding at which expulsion was recommended. District does not challenge Issue five, which is sufficiently pleaded to put District on notice of the issue to prepare for a resolution session, mediation and hearing.

ORDER

1. Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation and hearing dates shall remain as scheduled, unless otherwise ordered.

Dated: January 31, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings