

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030702

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 15, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent.

On March 26, 2012, 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

A procedural violation constitutes a denial of FAPE if it impeded the child’s right to a FAPE, significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

DISCUSSION

Student’s complaint alleges four claims. Issue Number four is addressed in a separate Order in connection with District’s Motion to Dismiss. Issues One through Three are all insufficiently pled, as discussed below. Student’s complaint fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

With respect to Issue One, Student alleges that District has failed to provide educational records to Parent. Student fails to state whether this procedural violation constituted a denial of FAPE by impeding the child’s right to a FAPE, impeding the parents’

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).

opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, and/or causing a deprivation of educational benefits. The complaint does not state a denial of FAPE and does not provide District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

With respect to Issue Two, Student alleges that District over the past two years has failed to fully and appropriately assess Student in all areas of suspected disability. The complaint does not specify what areas of Student's needs are being neglected by District. The complaint states extensive factual history dating back to 2001. Within the statute of limitations, it mentions assessments of Student's cognition and academics, and a Speech and Language assessment District conducted in 2012. The complaint fails to provide District with sufficient notice regarding whether these assessments are the only ones Student is challenging; in what respect they were deficient; or whether there are alleged to be further areas of need in which Student was not assessed at all.

With respect to Issue Three, Student alleges that District over the past two years has failed to provide Student with a FAPE. The complaint does not specify what areas of Student's needs were neglected by District. The complaint's factual history dating back to 2001 mentions Student's prior individualized educational programs (IEP's) that, although outside the statute of limitations, offered insufficient behavioral and speech and language services. The complaint fails to provide District with sufficient notice regarding whether it is these areas only in which Student has allegedly been denied FAPE, or whether other needs are not being met. For example, the complaint mentions a recent assessment recommending a structured learning environment addressing needs in the areas of pragmatics and social skills, with targeted reading interventions and assistive technology, but does not clarify whether the alleged denial of FAPE was in these areas of need. The complaint does not provide District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

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).⁸

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

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: March 26, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings