

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANTECA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012051124

ORDER PARTIALLY GRANTING
NOTICE OF INSUFFICIENCY

On May 23, 2012 Student filed a Due Process Hearing Request¹ (complaint) naming District. On June 7, 2012, District timely filed a Notice of Insufficiency (NOI) as to issues three, and nine through seventeen of the complaint. For the reasons discussed below, issues fifteen and seventeen are insufficient, such that the NOI is partially granted.

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 Individuals with Disabilities Education Act (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 twelve-page complaint lists seventeen issues for hearing accompanied by proposed resolutions. Student’s preamble of facts alleges that he is seventeen years old, has a profound bilateral hearing loss, that he communicates using limited American Sign Language (ASL) skills, that he is eligible for special education under the category of hearing impaired, and that District developed an IEP for him on May 27, 2010, which is the IEP at issue in the complaint. Student also alleges that he attended District schools until May 27, 2011, when his family moved to Fresno Unified School District (FUSD). Student also generally alleges that his hearing loss affected his academic, social and functional performance, and that District failed to provide him with an appropriate educational program, including placement, to address his unique educational needs resulting from deafness.

District contends that Student’s issues three and nine through seventeen fail to state sufficient facts to state a claim under the IDEA. For purposes of clarity, this order will address all issues in Student’s complaint.

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 one, Student alleges that District denied Student a FAPE by failing to provide him with appropriate related services in the area of language and communication, that he did not receive any speech services, and that, although District provided language therapy, it provided an insufficient quantity and focus to address his communication needs associated with the use of American Sign Language (ASL). Issue one is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue two alleges that District denied Student a FAPE by failing to provide Student's family, who are primarily Spanish speaking, with training in ASL. As a result of District's alleged failure, Student's ability to effectively communicate with his parents regarding his school work was impeded. Issue two is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue three alleges that District denied Student a FAPE by failing to offer Student appropriate goals and services to meet his unique needs. Student alleges that his goals were only focused on reading, writing and math, that those goals were inadequate in scope and detail, that District did not include appropriate goals addressing his language impairment, related learning disabilities, or to provide him with skills to help him access other academic content, which are described in more detail within other issues in the complaint. Although District argues that Issue three fails to identify specific areas in which goals were missing, that argument is not persuasive in light of a reading of the entire complaint. Issue three is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue four alleges that District denied Student a FAPE by failing to appropriately address Student's unique needs in the area of reading, including decoding and comprehension. Specifically, that it did not provide appropriate intensive instruction in those areas or appropriate goals. Student also alleges that the baselines and present levels of performance upon which District relied when creating the goals were ambiguous. Student includes several paragraphs of relevant related factual allegations, and therefore Issue four is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue five alleges that District denied Student a FAPE by failing to offer appropriate goals or related services in the area of written language. Student alleges that his extreme delays in use of English prevented him from accessing his high school curriculum and cause limitations on his transition options. Incorporating factual detail, Student alleges that his writing goals did not include appropriate target behaviors, that they were unclear based on his inability to speak English, and that they did not appropriately incorporate his limited skills in ASL while striving to teach him to write in English. Because the goals were not clear, Student alleges that his parents were deprived of the opportunity of participating in the design of his educational program. Issue five is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue six alleges that District denied Student a FAPE by failing to offer appropriate goals or related service in the area of math. Student alleges that his present levels of performance (PLOPs) in math were unclear at the time the goals were written, that goals failed to define the levels at which he would be expected to perform if the goal were achieved, and that they were not clearly measurable or designed to effectively teach him math skills. Student also alleges that District's failure to record thorough or accurate PLOPs in the May 27, 2010 IEP affected his educational program at FUSD. Issue six is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue seven alleges that District denied Student a FAPE by failing to provide Student with adequate transition guidance, and related goals, assessments and services. Student also alleges that District developed inadequate goals and offered inadequate skills to teach him the skills needed to transition from high school, and that the goals and transition plan lacked specificity. The lack of clarity in Student's transition plan transferred to FUSD, which relied upon and created a transition plan with similar lack of clarity. Issue seven is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue eight alleges that District denied Student a FAPE by failing to provide Student with adequate assistive technology (AT) access and services. Student alleges that because of his communication deficits he required AT in order to access his education both at home for homework and in the classroom, that District provided neither Student with no technology nor his parents with any instruction in AT in order for them to participate in his educational program. Issue eight is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue nine alleges that District denied Student a FAPE by failing to appropriately address his behavioral needs, and failing to appropriately document his behaviors and present levels of performance relating to behavior. As a result, District allegedly created a vague record of Student's challenging behaviors, and failed to provide appropriate services to address those behaviors, which resulted in Student going through disciplinary measures after he transferred to FUSD. Student contends that if District had appropriately recorded and addressed his behaviors while he was at District schools, including creating an appropriate behavior support plan, he may have avoided the problems he faced at FUSD, which included incarceration in Juvenile Hall. Student alleges that, based upon his unique needs in language and communication, District did not offer appropriate supports and services in the area of behavior to enable him to effectively socialize with his peers. In connection with Issue ten, discussed below, Student also alleges that the May 27, 2010 IEP team developed a Behavior Support Plan (BSP) and one behavioral goal for anger management, which addressed past behaviors rather than current behaviors. Student also alleges that at the May 27, 2010 IEP meeting District failed to appropriately address his challenging behaviors by making a referral for mental health evaluation and services. Issue nine is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process

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Issue ten alleges that District denied him a FAPE by failing to place him in a program with peers who had similar instructional needs, or peers who could help him meet his needs for social interaction and development. Student alleges that his IEP placement at Mantega Day School was insufficient to meet his needs, and that District failed to adequately explore appropriate placement options given his unique needs. Student alleges that he was placed in classrooms where he had no deaf peers, depriving him of sufficient opportunity for peer interaction. Issue ten is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue eleven alleges that District denied Student a FAPE by failing to provide student with appropriate social instruction and opportunities for social interactions in the context of his language and communication deficits. When read in conjunction with the entire complaint, issue eleven is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue twelve alleges that District denied Student a FAPE by failing to provide Student adequate instruction, goals, a systematic curriculum or assistive technology support in the area of social science. Student alleges he had no access to educational materials at home and insufficient access at school. Student alleges that he had the need for a specifically designed instruction, which District ignored. When read in conjunction with the entire complaint, issue twelve is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue thirteen alleges that District denied Student a FAPE by failing to provide adequate instruction, goals, a systematic curriculum or assistive technology support in the area of natural science. Student alleges he had no access to educational materials at home and insufficient access at school. Student alleges that he had the need for a specifically designed instruction, which District ignored. When read in conjunction with the entire complaint, issue thirteen is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue fourteen alleges that District denied Student a FAPE by failing to assess Student in the area of functional/adaptive/self-help/community access skills. Student alleges that, at the time of the May 27, 2010 IEP, he lacked many daily community access skills and that the IEP team knew that he had no community participation. When read in conjunction with the entire complaint, issue fourteen is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue fifteen alleges that District denied Student a FAPE by failing to convene “necessary meetings start[ing] at the beginning of the year.” Student also alleges that, although his annual IEP meeting was due in February 2011, District failed to convene an annual meeting before his family moved to FUSD on May 27, 2011. Issue fifteen is not clear

in many respects. First, the term “beginning of the year” is undefined as to which year is in question, whether it refers to a school year or calendar year, and whether more than one year is at issue. The complaint alleges that an IEP meeting occurred on May 27, 2010, but that District failed to hold an annual meeting from and after February 2011. However, Student then alleges that undefined meetings were convened but does not state when those meetings took place. Student also alleges that “[a]t the meetings that were convened” Student and his parents were denied adequate information to participate meaningfully. Student alleges facts that reiterate the claims addressed earlier in the complaint. Issue fifteen is insufficient. Student will be granted leave to amend, and, if he does so, he should include facts that clearly define in which year(s) he alleges District failed to hold an IEP, whether Parents requested an IEP, whether and how Parents’ request was addressed by District, and facts explaining the term “necessary meetings.”

Issue sixteen alleges that throughout the statutory period, District acted on the basis of “inadequate assessment data” and failed to consider information about Student that it had available to it. Student alleges that District had available to it assessment data in the area of academic and language skills showing that his levels were extremely low, that the assessor suspected a specific learning disability, and that District did not analyze the concerns raised by the assessor as to whether these problems were the result of other conditions other than his deafness. As a result, Student alleges District failed to appropriately assess Student’s unique needs in all areas of suspected disability and thereby denied him a FAPE. When read in conjunction with the entire complaint, issue sixteen is sufficient to put District on notice of the issues in order to prepare for a resolution session, mediation and a due process hearing.

Issue seventeen alleges that District violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), thereby denying him meaningful access to the benefits of a public education. Issue seventeen states no facts or claims relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to Student under the IDEA. As such it is insufficient, and Student will be granted leave to amend. However, Student should be aware that OAH has no jurisdiction to entertain claims arising under Section 504, and that any such claims, even if sufficiently alleged, may be subject to a motion to dismiss.

ORDER

1. Issues one through fourteen, and sixteen of Student’s complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues fifteen and seventeen of Student’s complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

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 through fourteen and sixteen in Student's complaint.

Dated: June 11, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

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