

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN LEANDRO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060331

ORDER OF DETERMINATION OF
SUFFICIENCY OF ISSUE TWO OF
THE DUE PROCESS COMPLAINT

On June 6, 2012 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the San Leandro Unified School District (District) as respondent. The complaint consists of three legal issues.

On June 13, 2012, the District filed a Notice of Insufficiency (NOI) as to Issue Two of Student's complaint. Issue Two states: "The District denied [Student] a FAPE [free appropriate public education] by failing to tailor an appropriate educational program to meet her individual and unique needs." (Complaint, p. 5:27-28.)

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

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).

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

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

Issue Two of Student’s complaint alleges claims which are insufficiently pled as discussed below.

The complaint contains a section entitled “Brief Summary of Facts” (Complaint, p. 2 through 4) which states that Student is a 15 year old, who has been diagnosed with Autism and is on medication for severe behavioral problems. Student then briefly reviews Student’s history since pre-school. As to the time at issue, Student alleges facts only as to Student’s behavioral problems. In Issue Two, Student contends “[t]he Student’s records are filled with commentary regarding [Student’s] struggles both behaviorally and academically.” (Complaint, p. 4:13-15.) Student alleges that an appropriate program for Student would include visual assistance, 1:1 teaching in core academic area like reading comprehension, extended school year services, social skills, behavioral training, community living skills, an

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.

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).

appropriate placement, and appropriate accommodations. (Complaint, p. 4:15-20.) Student offers no facts to support his contention that the District's proposed education program is not appropriate to meet Student's academic needs.

Issue Two of Student's complaint is insufficiently pled in that it 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 Two, Student needs to allege facts to support his contention that Student's academic needs were not being met by the District's proposed education program.

ORDER

1. Issue Two of 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
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, Issue two of the complaint will be dismissed.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Two in Student's complaint.

Dated: June 14, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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