

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012100038

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 1, 2012, Parents, on behalf of Student, filed a due process hearing request¹ (complaint) naming Hemet Unified School District (District) as respondent.

On October 3, 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

DISCUSSION

District contends that Student’s Issues 1 and 3 are insufficiently pled.

Student’s complaint alleges three issues. First, at a March 2011 IEP team meeting, Parents requested that Student’s arm braces be removed for 15 minutes per day, which District subsequently implemented after Parent’s provided a doctor’s note. However, in December 2011, District stopped removing Student’s braces because the type had changed and did not train Student’s aide on how to remove and replace the new braces until April 2012. Second, at Student’s March 2012 IEP team meeting, Parents requested an assistive technology assessment that has not yet been completed. Third, at the March 2012 IEP team meeting, it was agreed that District would provide anti-tip bars for Student’s wheelchair, but District failed to do so and Student’s mother was required to provide them.

Student’s complaint sufficiently alleges that daily removal of Student’s braces was part of her IEP. However, Student fails to propose a resolution or seek a remedy for District’s alleged failure to remove the braces, and so has not met the statutorily required

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).

standard of stating a resolution to the extent known and available to her at the time. For this reason, Issue 1 of Student's complaint is insufficiently pled.

Student's Issue 3 is similarly insufficient. The complaint adequately alleges that procurement and installation of the anti-tip bars were required by the March 2012 IEP, but Student fails to propose a resolution or remedy.

Student's complaint is insufficiently pled as to Issues 1 and 3 in that it fails include proposed resolutions to the problems alleged, depriving District of notice of the remedies sought.

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 Parents are encouraged to contact OAH for assistance if they intend to amend their complaint.

ORDER

1. Student's complaint is insufficiently pled at Issues 1 and 3 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).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 mediation, prehearing conference and hearing shall proceed as scheduled only on Issue 2 of Student's complaint.

Dated: October 4, 2012

/s/

ALEXA J. HOHENSEE
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.

