

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, FENTON AVENUE
ELEMENTARY CHARTER SCHOOL
AND BERT CORONA CHARTER
SCHOOL.

OAH CASE NO. 2012110024

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 31, 2012 Student filed a due process hearing request¹ (complaint) naming the Los Angeles Unified School District (District), Bert Corona Charter School (Corona) and Fenton Avenue Elementary Charter School (Fenton).

On November 15, 2012, Corona and Fenton filed a timely 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

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

Student’s complaint alleges four claims, one of which is sufficient and three of which are insufficient.

Student’s claims one, two and three are devoid of explanatory facts. Each of those claims is alleged as a one-sentence legal conclusion, that the various respondents have “failed to provide [Student] with a procedurally or substantively appropriate program” for the 2010-2011, 2011-2012 or 20112-2013 school years, and that Student was “unable to make meaningful progress, obtain educational benefit and suffer[ed] educational, emotional and psychological harm.” It is impossible to determine from these generic allegations what conduct by the respondents, or what component or components of an individualized education program (IEP) offer, Student is contending deprived him of a FAPE. Therefore, Student has failed to state sufficient facts supporting these claims, and they are insufficient.

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).

Student's fourth claim alleges that District and Corona unilaterally changed Student's educational program for the 2012-2013 school year by providing behavior and mental health support through District and school staff rather than a non-public agency. The facts alleged in this claim are sufficient to put District and Corona on notice of the issues forming its basis, and to permit District and Corona to respond to the fourth claim and participate in a resolution session and mediation on that claim.

ORDER

1. Issue four of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues one, two and three 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 Issue four in Student's complaint.

Dated: November 19, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

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