

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014040157

ORDER DETERMINING DUE
PROCESS COMPLAINT TO BE
INSUFFICIENT

On April 1, 2014 Parent on behalf of Student filed a Due Process Hearing Request¹ (complaint) naming the Burbank Unified School District (District).

On April 14, 2014, District timely 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 complaint is also required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).)

DISCUSSION

Student alleges five claims in his complaint, which are all insufficiently pled. With respect to Issue One, Student states that he was transferred from one math class to another math class with a different teacher. In Issue Two, Student states that one of his teachers lost one of his assignments. In Issue Three, Student states that he was not permitted to re-take an English test. In Issue Four, Student states that his Biology teacher is not promptly updating the students’ grades. In Issue Five, Student complains about miscommunications with his case manager regarding whether or not Student re-took an English test under the guidance of the case manager.

All of Student’s issues are complaints regarding how Student’s teachers and school administrators are managing their classes and the school structure. In Issue Three, Student appears to be stating that his teachers are not helping him with self-advocacy, but it is very unclear whether Student has a self-advocacy goal, what the goal requires, and if and how his

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).

teachers are failing to implement the goal. The same is true for the other four issues raised by Student. For each of the five issues, Student fails to state if and how the complaints in each of the issues relate to District's failure to implement the provisions of Student's individualized education plan, or if and how the complaints resulted in District's failure to provide Student with a free appropriate public education. For these reasons, all five of Student's issues are insufficient as presently stated.

Additionally, none of Student's proposed resolutions clearly state a concrete remedy that would address a failure of District to implement Student's individualized education program, or provide him with a legally sufficient education. The proposed resolutions are vague requests for OAH to become involved in classroom and school management. For example, the proposed resolution for Issue One, in which Student complains about being switched to a different math class, is for there to be more accountability from administrators, without specifying exactly what that means. The other four resolutions are equally vague. For these reasons, Student's proposed resolutions are also insufficient as pled.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Student's parent is encouraged to contact OAH for assistance if he intends to amend his due process hearing request.

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).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 complaint will be dismissed.

⁸ Ed. Code, § 56505.

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. All dates previously set in this matter are vacated.

6. If Student's parent wishes to have the assistance of an OAH mediator in identifying the issues and proposed resolutions for an amended complaint, he should immediately contact OAH.

DATE: April 18, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings