

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 FINDING STUDENT'S
COMPLAINT SUFFICIENT AS TO
PROBLEMS ONE AND THREE AND
INSUFFICIENT AS TO PROBLEMS
TWO, FOUR, AND FIVE

On May 1, 2014, Parent on behalf of Student filed an amended request for due process hearing (amended complaint), naming the Burbank Unified School District.

On May 9, Burbank timely filed a notice of insufficiency as to Student's amended complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ 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.² 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.³

¹ 20 U.S.C. § 1415(b) & (c).

² 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

DISCUSSION

Student’s Problem One states that sometime around January 2014, Burbank removed Student from his geometry class, where he had been making excellent progress. Student contends that his removal from the class has denied him a free appropriate public education (FAPE) because the material he is now being given is a review of what he did the last semester. Although not artfully written, this issue puts Burbank on notice that Student contends that his removal from his original geometry class has denied him a FAPE. Student’s primary resolutions for this issue is that Burbank include Student and his parent before making changes to Student’s IEP and general education classes, and that Burbank provide Student with extracurricular tutoring at no cost to Student’s parent. The issue and its proposed resolution are sufficient as alleged.

In Problem Two, Student contends that at an individualized education program (IEP) team meeting for Student on December 16, 2013, Burbank failed to write down an amendment for accommodations and goals that were discussed and agreed to by Student’s IEP team. Student alleges that this failure denied him a FAPE. However, Student then gives a long description of facts supposedly related to Problem Two that have no relationship to the problem as stated. Student describes a long list of complaints with his classes, his teachers, and school administrators, none of which are related to Problem Two, or which define why the stated actions denied Student a FAPE. Then, in his proposed resolution to Problem Two, Student references a completely different IEP meeting that has no relationship to the IEP meeting referenced in Problem Two. There is, in fact, no clear resolution

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

requested for Problem Two. Therefore, Student's Problem Two and its proposed resolution are insufficiently pled.

In Problem Three, Student alleges that Burbank has denied him a FAPE by failing to implement a self-advocacy goal developed by his IEP team on March 5, 2014. Student also alleges that his English teacher denied him a FAPE by failing to provide him with an accurate due date for an assignment. Finally, Student contends in Problem Three that the failure of his school Principal to respond to his parent's emails concerning matters affecting Student have also denied him a FAPE. As a resolution, Student requests that the school Principal, his teachers, and his IEP team members have open communications with Student's parent, and that he be permitted to re-take a test. Student also asks for an educational assessment to determine if he is at grade level. Although not artfully written, this issue and its proposed resolution are sufficiently pled.

In Problem Four, Student contends that he was not given adequate support to certain school assignments. He contends that this failure denied him a FAPE. However, Student has failed to describe how these alleged failures by his teachers are related to his IEP. He has failed to describe what provision of his IEP addresses the issues he raises in this problem. Student merely gives a litany of complaints about how some of his teachers manage their classes, without showing a causal connection to some failure to implement his IEP or otherwise provide him with a FAPE. Although the resolution proposed by Student of receiving more accurate weekly progress reports is sufficient, Problem Four as pled is insufficient to put Burbank on notice of how the facts state relate to an alleged denial of FAPE. Problem Four is not sufficiently pled.

In Problem Five, Student contends that Burbank's failure to implement a teacher log in his English class, denied him a FAPE. Student describes a problem surrounding his taking of an English make-up test and his teacher's failure to grade it. Student then contends that another teacher, who was monitoring Student during the make-up test, now contends that Student did not actually take the make-up test. Student then lists many paragraphs of complaints he has concerning the alleged failure of Burbank administrators to communicate with Student's parent and address his many complaints with how Burbank is running its classes and communicating with Student's parent. Student fails to explain how any of this relates to more than his disagreement with how Burbank runs its schools and if and how it communicates with parents. Student's Problem Five fails to describe how any of the many complaints raised denied him a FAPE. Therefore, Problem Five is insufficient as pled.

ORDER

1. Problems one and three of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Problems two, four, and five 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 a second amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁷

4. The second 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 Problems one and three in Student's complaint.

DATE: May 13, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁷ The filing of an amended complaint will restart the applicable timelines for a due process hearing.