

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014060932

ORDER DENYING NOTICE OF
INSUFFICIENCY AND CLARIFYING
ISSUES

On June 16, 2014 Student filed Due Process Hearing Request¹ (complaint) naming Los Angeles Unified School District (District). On June 30, 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

DISCUSSION

Student’s complaint includes basic information about Student, who is twelve years old, an English language learner, and attends Lull Special Education Center. The complaint alleges no specific facts that identify what Student’s unique needs are, whether he is eligible and under what eligibility he qualifies for special education, which individualized education plan is at issue, when District denied Student a free appropriate public education (FAPE) and why.

However, the pleadings identify sixteen different issues, fifteen of which, as rephrased below, are sufficient to give District notice of the claims and prepare for a resolution session, mediation and hearing. If Student intended for the issues to be otherwise than set forth below, Student may amend his complaint, providing he provides sufficient facts to support each claim articulated in the amended complaint. The issues alleged are:

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).

1. Did District deny Student a FAPE within the applicable statutory period by failing to offer an appropriate placement that addresses all of Student's unique needs?

2. Did District deny Student a FAPE within the applicable statutory period by failing to offer Student related services and supports to address his unique needs, including:

- a) An appropriate orientation and mobility program;
- b) A therapeutic pool and Hubbard tank;
- c) Therapy with dogs;
- d) On-site California Children's Therapy services;
- e) Occupational therapy;
- f) Vision therapy;
- g) Language therapy;
- h) Physical therapy
- i) A full-time nurse on campus;
- j) A full-time bilingual aide or teacher; and
- k) Assistive technology, including an iPad?

3. Did District deny Student a FAPE during the applicable statutory period by failing to appropriately address Student's unique academic needs in functional reading, functional math and functional writing, including taking into consideration his bilingual needs?

Student's Issue 6-14 alleges that Student is being denied a FAPE by not being provided the same resources as students without disabilities who are attending District schools, such as an iPad and other resources. As a proposed resolution, Student seeks an iPad and "all other resources being provided to student without disabilities who are attending [District] schools." This claim is insufficient because its basis is that District is discriminating against Student, which is not within OAH's jurisdiction under the Individuals with Disabilities Education Act. It also fails to identify which specific need District has failed to address and what resources, other than an iPad, District failed to provide. However, to the extent Student contends that he was not provided with assistive technology designed to meet his unique needs, that claim is included in Issue Two, as subsection (k). Issue 6-14 is otherwise insufficient and is dismissed without leave to amend for lack of OAH jurisdiction.

Student's proposed resolutions seek placement at Lokrantz Special Education Center or a non-public school at District's expense, and the various services and supports outlined above in Issues Two and Three. The resolutions are sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii). The issues for hearing shall be as articulated above, unless otherwise ordered.

2. Issue 6-14 of the complaint is dismissed with prejudice on the ground that OAH has no jurisdiction over discrimination claims.

3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: July 1, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings