

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. 2014070183

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 24, 2014, Student, through his attorney, filed a Due Process Hearing Request¹ (complaint) naming the Los Angeles Unified School District. On July 8, 2014, Los Angeles, through its attorney, 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 Individuals with Disabilities Education Act (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 is found **partially sufficient** as discussed below. Student’s complaint includes sixteen issues. However, as presented, most of the alleged “issues” are mere statements of requested remedies rather than statements of facts relating to the problems regarding Los Angeles’ offer of a free appropriate public education (FAPE) to Student. Generally, Student’s complaint fails to identify any specific individualized educational program(s) that may be in issue in this case, and did not provide specific timelines for any alleged failure. Nonetheless, in light of the guidance (note above) that the pleading requirements be liberally construed due to the broad remedial purposes of the IDEA and the relative informality of the due process hearings, eight of the sixteen issues presented in Student’s complaint are found sufficient, as discussed below.

Issues 8, 9, 10, 11, 12, 13, 15 and 16. Respectively, Student’s Issues 8, 9, 10, 11, 12, 13, 15 and 16 allege that Los Angeles denied Student a FAPE during the 2013-2014 school years by: 1) failing to provide Student with a picture/sound board for school and home use in

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).

order to support Student's IEP goals; 2) failing to provide Student with language therapy designed to enable Student to receive educational benefit; 3) failing to provide Student with sufficient vision therapy designed to enable Student to receive educational benefit; 4) failing to provide Student with sufficient occupational therapy designed to enable Student to receive educational benefit; 5) failing to provide Student with sufficient physical therapy designed to enable Student to receive educational benefit; 6) failing to provide Student with a trained full time aide that can assist Student; 7) failing to provide Student with instruction designed to enable Student receive educational benefit and prepare him for further education, employment and independent living, and by failing to provide Student proper resources for his academic needs; and 8) failing to place Student at a school with a sensory room and a vision therapy room for students.

Issues 8, 9, 10, 11, 12, 13, 15 and 16 present relevant descriptions of the nature of the problems relating to the provision of a FAPE to Student, and provide Los Angeles with an awareness or understanding of the issues forming the basis of the complaint. . In addition, regarding Issues 8, 9, 10, 11, 12, 13, 15 and 16, Student's complaint meets the statutory requirement that parties must state a resolution to the extent known and available to him/her at the time of the filing of the complaint. Accordingly, **Student's Issues 8, 9, 10, 11, 12, 13, 15 and 16 are sufficiently pled.**

Issues 1, 2, 3, 4, 5, 6, 7 and 14. Student's Issues 1, 2, 3, 4, 5, 6, 7 and 14 fail to provide a relevant description of the nature of a problem relating to any proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student. Other than providing a generalized allegation of a denial of FAPE to Student, Issues 1, 2, 3, 4, 5, 6, 7 and 14 contain no specifics as to how or what denial of FAPE occurred.

Therefore, regarding these specific issues, Student's complaint fails to provide Los Angeles with an awareness or understanding of the the basis of the complaint, and fails to provide Los Angeles with the required notice, or adequate description of the nature of the problems, or the facts relating to the problems that could support a claim that is cognizant or identifiable under IDEA. Accordingly, **Student's Issues 1, 2, 3, 4, 5, 6, 7 and 14 are insufficient.**

ORDER

1. Issues 8, 9, 10, 11, 12, 13, 15 and 16 in Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii), as limited above.
2. **Student's Issues 1, 2, 3, 4, 5, 6, 7 and 14 are insufficient under title 20 United States Code section 1415(c)(2)(D).**

3. Student shall be permitted to file an amended complaint regarding Issues 1, 2, 3, 4, 5, 6, 7 and 14 under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸ 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 regarding Issues 1, 2, 3, 4, 5, 6, 7 and 14, the hearing shall proceed only as to Issues 8, 9, 10, 11, 12, 13, 15 and 16 in Student's complaint.

DATE: July 10, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

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