

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LANCASTER SCHOOL DISTRICT.

OAH Case No. 2014090807

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 19, 2014, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming Lancaster School District. On September 24, 2014, Lancaster 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 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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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).

⁴ 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.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act 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 six claims, all of which are insufficiently pled. While the complaint appears to contain some issues relating to Student’s special education needs, the complaint lacks the specificity necessary to inform Lancaster of the issues in this matter so that it may prepare for hearing and participate in a resolution session and mediation.

For instance, the complaint seems to allege that Lancaster failed to provide Student with accommodations as outlined in Student’s individualized education program. However, the complaint fails to identify the IEP by date, and fails to identify the specific accommodations being referenced. Without this information, the issue is too vague and does not provide Lancaster the requisite notice.

Student contends that the school psychologist is not meeting his needs, which appears to raise an issue of failure to provide FAPE related to Student’s mental health needs. However, the complaint again lacks specificity, such as, failing to identify which of Student’s needs are not being met, how Student’s needs are not being met, and whether the services were provided as part of an IEP. Without more clarity and specificity, the complaint fails to provide the necessary information to put Lancaster on notice as to the alleged problem such that it can prepare a defense, and participate in resolution session and mediation.

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).

In the complaint, Student seems to allege that a change in placement has occurred due to Student's inability to attend school as a direct result of Lancaster's failure to meet Student's educational needs. Without additional factual information to explain this allegation, Lancaster is denied the opportunity to have an awareness and understanding of the issue.

On the whole, Student's complaint is insufficiently pled in that it fails to provide Lancaster with the required notice of a description of the problem and the facts relating to the problem. Student may file an amended complaint in order to address the insufficiencies of the complaint. In filing an amended complaint, Student should focus on identifying the problems which Student is experiencing and the manner in which Student's educational needs are not being met. Additionally, Student's amended complaint should provide specific factual detail surrounding each allegation, such as, dates of the IEP or IEP's at issue, the services being denied, and the job titles of the Lancaster personnel who are involved.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ **Parents are encouraged to contact OAH for assistance if they intend to amend their 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.

DATE: October 1, 2014

/s/

ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings