

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALUM ROCK UNION ELEMENTARY
SCHOOL DISTRICT.

OAH Case No. 2015050864

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 12, 2015 Student filed a Due Process Hearing Request¹ (complaint) naming the Alum Rock Union Elementary School District.

On May 22, 2015, Alum Rock timely filed a Notice of Insufficiency as to Student's complaint. Alum Rock contends that Issues one, two, and four of Student's complaint are insufficient.

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

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).

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

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 alleges five claims. Alum Rock does not contest the sufficiency of Issues two (a), three and five, and they are therefore deemed sufficient. In Issue four, Student contends that Alum Rock’s offer of push-in resource specialist services at a rate of three times a week for 35 minutes each session, pull-out resource specialist services for 20 minutes a week, and counseling services for 50 minutes a week failed to offer her a free appropriate public education. Although Student does not specifically identify the individualized educational program at issue, it is clear from the context of her complaint that she is referencing the IEP that occurred on January 26, 2015. Based on the facts provided in Student’s complaint, Issue four is sufficient as pled.

However, as contended in Alum Rock’s notice of insufficiency, Issues one and two of Student’s complaint are insufficiently pled. These issues fail to provide Alum Rock with the required notice of a description of the problem and the facts relating to the problem with enough detail to permit Alum Rock to participate in a resolution and/or mediation session, or to defend against the claims at hearing.

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).

In Issue one, Student contends that Alum Rock denied her a FAPE from May 2013 to the present by failing to address Student's needs in a variety of areas. The basic deficiency in Student's complaint is that she acknowledges that she attended a private school from kindergarten to the present. There are no facts in Student's complaint that state why Alum Rock was responsible for providing her with an education at any time prior to the IEP team meeting that apparently occurred on January 26, 2015. There are no facts that state whether Student had previously been found eligible for special education as a public school child, or why Alum Rock should have been aware of Student's needs. To the extent that Student is attempting to allege that Alum Rock failed to offer Student a FAPE at the January 26, 2015 IEP team meeting, Student fails to state what the offer was and why it failed to meet her needs. For these reasons, Issue one is insufficient as pled.

In Issue two, Student alleges that Alum Rock failed to provide her with appropriate goals and objectives to address her needs, from the time of May 2013, to the present. Like Issue one, Issue two suffers from a lack of facts connecting Alum Rock to any responsibility for Student's education, at least prior to January 26, 2015. To the extent that Student alleges that the January 26, 2015 IEP failed to provide her with appropriate goals and objectives, Student fails to identify which goals in that IEP are deficient and why they are deficient. She also fails to state in which areas Alum Rock should have proposed goals that were not included in the IEP. For these reasons, Student's Issue 2 is deficient as pled.

ORDER

1. Issues two (a), three, four, and five of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues one and two 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 an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸
4. 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.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues two (a), three, four, and five of Student's complaint.

DATE: June 2, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings