

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UKIAH UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015090822

ORDER OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 16, 2015, Student filed a Request for Due Process Hearing naming Ukiah Unified School District.

On September 25, 2015, District filed a Notice of Insufficiency as to all issues contained in Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)

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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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.¹

¹ 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.”² 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.³ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁴

DISCUSSION

Student’s complaint alleges fifteen claims in the complaint, which are all insufficiently pled. Student’s complaint fails to provide District with the required notice of a description of the problem and the facts relating to the problem. Although Student’s complaint, pages six through nine, references “see attached document,” no factual contentions are provided for any of the fifteen claims. Specifically:

Issue One asserts Student’s school day was restricted without parental consent or notification. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, who was involved, when this allegation occurred, how it was connected to special education, or how it resulted in a denial of a free appropriate public education.

Issue Two asserts Student was denied assistive technology devices as outlined in his February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, who was involved, when this allegation occurred, or what was required to be provided.

Issue Three asserts Student was denied preferential/assigned seating in all settings. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, who was involved, when this allegation occurred, how it was connected to special education, or how it resulted in a denial of a free appropriate public education.

² Sen. Rep. No. 108-185, *supra*, at p. 34.

³ *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.].

⁴ 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).

Issue Four asserts Student was denied special education transportation by District as indicated in the February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, who was involved, when this allegation occurred, or what was required to be provided.

Issue Five asserts Student was denied behavior intervention services as outline in the February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, when this allegation occurred, or what was required to be provided.

Issue Six asserts Student was denied occupational therapy, both direct and indirect, as outlined in the February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, when this allegation occurred, or what was required to be provided.

Issue Seven asserts Student was denied speech and language services, both direct and indirect, as defined in the approved February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, when this allegation occurred, or what was required to be provided.

Issue Eight asserts Student was denied intensive individual services as outlined and approved in the approved February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, when this allegation occurred, or what was required to be provided.

Issue Nine asserts Student was denied full inclusion. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, when this allegation occurred, what was Student's placement, what was required to be provided, how it was connected to special education, or how it resulted in a denial of a free appropriate public education.

Issue Ten asserts during the 2015 extended school year, Student's school day was restricted without parental consent or notification. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, who was involved, when this allegation occurred, how it was connected to special education, or how it resulted in a denial of a free appropriate public education.

Issue Eleven asserts during the 2015 extended school year, Student was denied special academic instruction as outlined in the February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, when this allegation occurred, or what was required to be provided.

Issue Twelve asserts during the 2015 extended school year, Student was denied speech and language, both direct and indirect, as outlined in the February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, when this allegation occurred, or what was required to be provided.

Issue Thirteen asserts during the 2015 extended school year, Student was denied occupational therapy services as outlined in the February 25, 2015 individualized education program. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, when this allegation occurred, or what was required to be provided.

Issue Fourteen asserts improper notification of individualized education program and/or any changes. No additional information is provided. Student fails to provide any factual contentions to support this claim, including, who was involved, when this allegation occurred, how it was connected to special education, or how it resulted in a denial of a free appropriate public education.

Issue Fifteen asserts “communication with Turning Point Staff after that was revoked in writing, verbal as well as indicated in meeting notes.” No additional information is provided. Student fails to provide any factual contentions to support this claim, including, who was involved, when this allegation occurred, how it was connected to special education, or how it resulted in a denial of a free appropriate public education.

None of Student’s fifteen claims contain any factual support to indicate when the events occurred, what happened, and how it affected Student or denied him a free appropriate public education. Without additional information regarding each of the fifteen claims, District is not provided sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

A PARENT WHO IS NOT REPRESENTED BY AN ATTORNEY may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parent is encouraged to contact OAH for assistance to amend Student’s due process hearing request by calling (916) 263-0880.

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).⁵

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.

5. All dates previously set in this matter are vacated.

DATE: September 29, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

⁵ The filing of an amended complaint will restart the applicable timelines for a due process hearing.