

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WASHINGTON UNIFIED SCHOOL
DISTRICT AND FRESNO COUNTY
OFFICE OF EDUCATION.

OAH Case No. 2016030074

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 25, 2016, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming Washington Unified School District and the Fresno County Office of Education. On March 1, 2016, Washington filed a Notice of Insufficiency 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. (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 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46, 540-46541, 46699.)

DISCUSSION

Washington contends the complaint is insufficient and further asserts that Issue Twelve should be dismissed as insufficient because it alleges an issue and facts outside of OAH’s jurisdiction. Contrary to Washington’s contentions, Student’s complaint is sufficient to put Washington on notice of the issues forming the basis of the complaint. The issues are discussed below.

In Issue One, Student claims that the District failed to meet his needs with respect to case coordination. The narrative that follows includes specific allegations, such as not adequately supporting the services Student’s family has obtained, inappropriately relying on Student’s family, and failing to ensure the presence of community college staff at IEP team meetings. This issue describes the problem and includes related facts which are sufficient to provide Washington with an awareness and understanding of the issue.

Issue Two is sufficiently pled to put Washington on notice as to the basis of Student’s claim. Student claims the District failed to provide him necessary reading instruction. Student states that Washington, at various IEP team meetings during the past two years, took the position that it did not have to provide any specialized literacy instruction. Student has identified a denial of a specific type of services which has occurred at IEP team meetings during the past two years. The dates of the meetings can be elicited during the prehearing conference in this matter, and the issue as pled is deemed sufficient.

In Issue Three, Student claims that the District failed to provide him necessary writing instruction and has discouraged him from using the inadequate support that has been provided. Student states that the District decided Student does not need to learn to write and that staff have offered minimal help in writing and discouraged him from seeking help with writing. This issue describes the problem and includes related facts which are sufficient to provide Washington with an awareness and understanding of the issue.

Issue Four is sufficiently pled. Student claims the District failed to meet his needs in the area of assistive technology. Student states that the District failed to provide a tablet with internet access pursuant to the December 2015 IEP and failed to ensure the prompt repair of Student's phone access device. This issue identifies a clear area of need and includes specific facts to support that the assistive technology services were not implemented and were not adequate.

In Issue Five, Student claims that the District failed to meet his needs with respect to family training. Student states that this is an ongoing need related to Student's education and transition, and the District has failed to offer any supports to Student's family to help them learn to communicate with him, such as through texting and sign language. This issue describes the problem and includes related facts which are sufficient to provide Washington with an awareness and understanding of the issue.

In Issue Six, Student claims that the District failed to meet his need for regular access to signing peers. Student states that the District has done nothing to support his access to the deaf community at Fresno City College, the Deaf and Hard of Hearing Center, or through other community activities. Student has identified an area of need that Washington allegedly did not address and has thus described the problem adequately to provide Washington with an awareness and understanding of the issue.

In Issue Seven, Student claims that the District failed to meet his needs for instruction in American Sign Language. Student states that during the past two years, the District has mostly outsourced ASL instruction and failed to assist Student in registering and obtaining ASL instruction at Fresno City College. This issue describes the problem and includes related facts which are sufficient to provide Washington with an awareness and understanding of the issue.

In Issue Eight, Student claims that the District has not met his needs in the area of math. Student has identified an area of need related to Student's independent living skills that Washington allegedly neglected to adequately address and has thus described the problem sufficiently to provide Washington with an awareness and understanding of the issue.

Issue Nine is sufficiently pled. Student claims the District has not met his needs in the area of transition services. Student identifies several areas in which Washington has not provided adequate services: ASL instruction, academic instruction, independent living skills, civic involvement, and independent mobility. The nature of the problem and facts related to the problem are sufficiently identified to put Washington on notice as to the basis of this claim.

In Issue Ten, Student claims that the District has not taught, and has undermined, Student's self-advocacy skills. Student states that Washington staff misinformed him about his decision-making authority and describes ways in which the District has harmed his relationship with his family. This issue describes the problem and includes related facts

which are sufficient to provide Washington with an awareness and understanding of the issue.

In Issue Eleven, Student claims that the District has failed to adequately assess him and should provide an independent educational evaluation. Student asserts that Washington's assessment was incomplete and failed to incorporate adequate accommodations and specialized testing techniques. Student further asserts that the report does not clarify his communication abilities and transition needs or provide meaningful proposals for his communication deficits. Finally, Student states that the report described family dynamics in a prejudicial, demeaning manner. While the type and date of the assessment can be elicited at the prehearing conference, the nature of the problem is sufficiently clear, and the facts are sufficiently specific to provide Washington with an awareness and understanding of the issue.

In Issue Twelve, Student claims that the District failed to provide a FAPE in the least restrictive environment as required by Section 504 of the Rehabilitation Act of 1973 and its implementing regulations. Washington's jurisdictional challenge to this issue is not properly the subject of an NOI, which addresses only whether the complaint is sufficient and provides adequate notice of Student's claims. This Order does not bar Washington from presenting its argument in a motion to dismiss or as an affirmative defense. However, at this stage of the proceeding, the issue is deemed sufficient because it adequately describes the nature of the problem to put Washington on notice of the claim.

Accordingly, the complaint is sufficient to put Washington on notice of the issues forming the basis of the complaint. The complaint identifies the issues and provides adequate related facts about Student's claims to permit Washington to respond to the complaint and participate in a resolution session and mediation. Although the issues are deemed sufficient, nothing precludes the Administrative Law Judge conducting the prehearing conference in this matter from further refining the issues in consultation with the parties or Washington from requesting further clarification in the prehearing conference or raising its arguments as defenses at hearing.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: March 9, 2016

DocuSigned by:
Lisa Lunsford
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LISA LUNSFORD
Administrative Law Judge
Office of Administrative Hearings