

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010090273

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On September 7, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming San Ramon Valley Unified School District (District) as the respondent. The complaint alleged the following issues: 1) Whether Student was denied a FAPE from September of 2008 (two years prior to the date of filing) because the District did not adequately assess Student in all areas of suspected disability; 2) Whether Student was denied a FAPE because the District did not “tailor an appropriate educational program to meet his individual and unique needs;” 3) Whether Parents are entitled to reimbursement for a September of 2009 unilateral placement; and 4) Whether Student’s and Parents procedural rights were denied because the failed to provide a complete copy of Student’s school records. On September 20, 2010, District filed Notice of Insufficiency (NOI). District contends that the complaint is insufficient as to Issue Two because it is not supported by sufficient factual allegations such as specific dates of IEPs that are allegedly inadequate or any allegations stating how the particular IEPs did not meet Student’s unique needs. District contends that Issue Three is insufficient because it is not a request for a remedy, and not a distinct issue for hearing. Finally, District contends that Issue Four is insufficient because it does not contain any allegations of specific dates and does not allege how Student was denied a FAPE. As discussed below, the complaint is insufficient, but Student will be given an opportunity to amend.

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 section 1415(b)(7)(A).

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). All subsequent statutory references are to Title 20 United States Code unless otherwise indicated.

² § 1415(b) & (c).

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 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 ALJ.⁷

DISCUSSION

Here, Issue One is sufficient. It alleges specific time frames and specific assessments that Student contends should have been performed, as well as allegations that the District’s behavior assessments should have been more comprehensive.

As to Issue Two, District is correct that it is insufficient. Student has not identified the exact IEP offers or even school years in which he contends the District failed to offer him a FAPE. Similarly, because no particular school year or IEP is alleged to be at issue, Student has not included any allegations explaining how the District’s offered program did not meet his needs. Issue Two is insufficiently pleaded.

As to Issue Three, District is correct that it states a request for a remedy and would not be a separate “issue” for hearing. However, the fact that it is a remedy request does not

³ § 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.

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).

make it insufficient for purposes of whether or not Student met the IDEA's notice requirements in the complaint. Although the issue of reimbursement is only reached if Student demonstrates he was denied a FAPE, and therefore is not an "issue" for hearing, Student has adequately put the District on notice that he is seeking reimbursement for a unilateral placement Student entered in September of 2009.

Finally, Issue Four is insufficient. In Issue Four, Student alleges that his procedural rights were denied because the District did not provide a complete copy of his school records. Student fails to allege any specific dates records were requested and the complaint contains no related factual allegations explaining how Student was denied a FAPE by the alleged procedural defect. Issue Four is insufficient.

ORDER

1. Issue One of Student's complaint is sufficient under section 1415(b)(7)(A)(ii). Although Issue Three is not an "issue" for hearing unless Student separately proves a denial of FAPE, the remedy request set forth in Issue Three does not make the complaint insufficient.

2. Issues Two and Four of Student's complaint are insufficiently pled under section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸

4. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue One.

Dated: September 21, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

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

