

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011030139

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 02, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming the Irvine Unified School District (District).

On March 16, 2011, the District timely filed a consolidated pleading in which it moved to dismiss and strike portions of Student's complaint as well as requested a finding that Student's complaint was insufficient. This order addresses the District's Notice of Insufficiency (NOI) as to Student's complaint. The District's motions to dismiss and strike will be addressed in a separate order.

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 (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

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).

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 contains five issues. Issue one contends that the District violated the Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act (Section 504), Student’s civil rights under 42 United States Code, section 1983 (Section 1983), and denied him a free appropriate public education (FAPE) when the District failed to fully inform Student and his parents of their rights under the IDEA. Student contends that this failure denied him access to due process. Student seeks a waiver of the statute of limitations back to the 2004-2005 school year based on this allegation.

In issue two, Student contends that the District violated his rights under the IDEA, Section 504, and Section 1983, and denied him a FAPE, when it failed to access him to determine eligibility for special education services from the 2004-2005 school year to February 7, 2011.

In issue three, Student contends that the District violated his rights under the IDEA, Section 504, and Section 1983, and denied him a FAPE when it failed to assess him in all areas of known or suspected disability, including executive functioning, auditory processing,

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).

visual motor integration, social skills, functional communication, behavioral issues, social emotional function, and studies skills.

Student alleges in issues four and five that the District violated his rights under the IDEA, Section 504, and Section 1983, and denied him a FAPE, by failing to find Student eligible for special education services under the eligibility classifications of other health impaired and/or emotional disturbance, and thereafter develop an individualized education program for him. As a result of all issues he has put in contention, Student proposes various remedies which are not at issue in the District's NOI.

The District contends that all of Student's issues are insufficient, although it does specifically address why issue one is insufficient. Issue one is specific and thus sufficient as to the allegation presented: that the District failed to inform Student and his parents of their due process rights. The factual background presented in Student's complaint indicates that he contends that this failure occurred as far back as the 2004-2005 school year. Issue one is therefore sufficient.

The District contends that issue two is insufficient because, in alleging that the District failed to assess Student from 2004 until February 7, 2011, Student contradicts the acknowledgement in his complaint in issue three that the District did assess Student in January 2011. However, the District fails to present any authority for its position that alternative or contradictory contentions constitute a basis for finding a complaint insufficient if the allegation describes the problem and gives a factual background for it as Student has done here. Issue two is therefore sufficient.

With regard to issue three, the District contends that it is insufficient because Student does not give a factual basis for his assertion that the District should have assessed him in the areas indicated in the complaint. However, the District is creating too high a standard for a complaint. A party is not required to present all evidence in support of its contentions in the complaint. It will be Student's burden at hearing to prove that the District knew or should have known at the time that Student should have been assessed in the areas indicated in his complaint. Issue three is therefore sufficient.

The District contends that issues four and five are insufficient because Student does not provide any information as to why and how Student should have been found eligible for special education under the eligibility classifications of other health impaired and emotional disturbance, thus making the District responsible for developing an individualized education program for him. The District is correct that there is no factual basis given for Student's contention that he should have been found eligible as emotionally disturbed. Student states that he was receiving therapy for depression at some point, and that he suffered from anxiety, but those facts alone are insufficient to put the District on notice as to why Student would meet the educational definition of an emotionally disturbed student. The District's NOI is therefore sustained as to Student's contention that he should have been found eligible as emotionally disturbed.

However, Student presents enough facts in support of his allegations contending that he should have been found eligible under the classification of other health impaired. Student states that he suffers from attention deficit hyperactivity disorder and that he has a history of teachers finding that he wastes time at school, that he has difficulties with attention, organizational skills, and completion of in-school and homework assignments, working memory, writing conventions, fluency, anxiety, and depression. Student also contends that a privately obtained assessment in 2004 found that he has auditory processing issues. Student therefore has provided sufficient information in his complaint relating to his contention that he should have been found eligible under the classification of other health impaired.

ORDER

1. Issues one, two, three, and parts of issues four and five of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Those parts of Issues four and five contending that the District should have found Student eligible for special education under the classification of emotional disturbance, and thereafter developed an individualized education program addressing Student's needs as an emotionally disturbed student, 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues one, two, and three, and on issues four and five as they related to the contentions that Student should have been found eligible for special education under the classification of other health impaired.

Dated: March 21, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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