

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011040073

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 5, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming the Upland Unified School District (District). The District filed a Notice of Insufficiency (NOI) as to Student's complaint on that same date.

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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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).

⁴ 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.”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

Issues Raised in the Complaint

In this case, Student’s complaint contains five initial claims and then separately lists six additional paragraphs. As detailed below, all issues, with the exception of Student’s second issue five, are insufficiently pled because they fail to adequately describe the issue or because the claim does not raise an issue within the jurisdiction of the Office of Administrative Hearings (OAH).

In his first issue one, Student states that District staff was rude and demeaning at an individualized education program (IEP) meeting convened on February 18, 2011. Student fails to state how or why the alleged rudeness by District staff denied him a free appropriate public education (FAPE) or denied his parent the ability to participate in the IEP process. In issue two, Student states that requests to help him have gone unanswered by the District. Student fails to state what requests for help he has made and why and how the District’s failure to address his requests has denied him a FAPE. In issue three, Student states that he is being demeaned in class and that the District is evidencing bias against him. He also states that the District’s teaching and disciplinary methods are not appropriate for him. Student does not state how he is being demeaned, and how the District is demonstrating bias against him, or how the District’s attitude toward Student or the teaching methodologies being used are denying him a FAPE. Student also fails to describe his unique needs and how and why those unique needs require a methodology different than that chosen by the District. Nor

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).

does Student define which of his IEP's he believes fails to address his unique needs. In any case, the jurisdiction of OAH does not extend to bias claims. In issue four, Student states that the manner of implementing his IEP is causing him "emotional and psychological torture." Student fails to state which IEP he is contesting, and how, exactly, the District is failing to implement it, or how the manner of implementation denies him a FAPE. Student also states that interventions used by the District are injurious to him, but fails to state what the interventions are, whether they are part of his IEP or whether the District is implementing them outside of the IEP, and how and why they are harmful to him.

In issue five, Student contends that the District is failing to follow a resolution settlement agreement entered into between him and the District in May 2009 because the District's occupational therapy independent educational assessment did not include sensory integration assessing as required by the settlement agreement. Student appears to be stating that because of this failure, the occupational therapy assessment was improper. However, Student fails to state why his unique needs require that sensory integration be part of an occupational therapy assessment and how, if at all, he has been denied a FAPE because of the alleged failure of the assessment to address sensory integration issues. To the extent that Student is asking OAH to enforce the resolution settlement agreement that is beyond OAH's jurisdiction.

Student then lists another six paragraphs, which may or may not be intended as separate issues. In the second set of issues, in issue one Student appears to be alleging that an IEP held on January 5, 2010, was never completed. However, it is unclear whether Student is contesting the fact that the meeting on January 5 was ended before all IEP issues could be addressed or contesting that the meeting was never continued to another date. It is unclear if Student's parent approved the IEP, or if she is still contesting it. In his second issue two, Student states that a District staff member acknowledged to his parent and to his advocate that negative reinforcements can be damaging to special needs students. This issue fails, however, to give any indication of what Student contends the District did or did not do that resulted in a denial to him of a FAPE. Likewise, Student's second issue three fails to describe how the alleged change in Student's schedule denied him a FAPE.

Student's second issue four states that his parent has been told that when Student goes to his resource class he is in fact in detention. Student fails to articulate if that is really happening, if he is not being given resource instruction, and how his educational needs are not being met by the District. Student also states that the District is retaliating against him for having expressed concerns in his IEP. Student however fails to state when and how the District retaliated against him and how such retaliation denied him a FAPE. Student further states that the District has prohibited his parent from dropping Student at school or picking him up, but fails to state how such actions deny him a FAPE.

In Student's issue six of his second list of issues, Student states that he was not given prior written notice of actions taken, or refused to be taken, by the District. However, Student fails to state the time frame at issue. It is also unclear which actions or decisions Student contends required the District to give his parent prior written notice. The remainder

of the statements in paragraph six fail to give a clear description of what exactly the District is supposed to have done and how its actions resulted in a denial of FAPE to Student.

Finally, the portion of Student's second issue five which states that the District representative made derogatory remarks at an IEP meeting about Student's advocate and about his parent does not clearly plead a violation of Student's rights. However, the first part of second issue five sufficiently puts the District on notice of the issues raised. Student states that at the IEP meeting held on March 6, 2010, the District representative dismissed Student's two teachers before the IEP meeting was over and before Student's parent had an opportunity to question them on aspects of Student's education. Second issue five also clearly states that the District rejected input from Student's advocate concerning her observations or recommendations, and rejected input from Student's parent. These issues are sufficiently pled to inform the District of the allegations Student is making and the time frame in which they allegedly occurred.

Resolutions

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Some of the proposed resolutions stated in Student's complaint are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Mediator Assistance for Non-Represented Parents

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. If Student's parent wishes mediator assistance, she may either write to OAH in Sacramento, or call OAH at (916) 263-0880 to make the request.

⁸ Ed. Code, § 56505.

ORDER

1. Student's second issue five of his complaint, to the extent that it alleges that the IEP meeting held March 6, 2010, was improper because the District dismissed Student's teachers from the meeting too soon and failed to permit Student's parent and his advocate to give their input into the IEP meeting, is sufficiently pled under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All five issues in the first set of Student's issues in his complaint, as well as issues one, two, three, four, and six, of the second set of Student's issues, 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).⁹

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 Student's second issue five of his complaint to the extent detailed in paragraph one above.

6. If Student's parent wishes to receive help from an OAH mediator in writing the amended complaint, she should either write to OAH, or call the OAH offices in Sacramento at telephone number (916) 263-0880.

Dated: April 11, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.