

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011040786

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 21, 2011, Parents, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming the Newport-Mesa Unified School District (District). On May 6, 2011, District filed a Notice of Insufficiency (NOI) 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.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

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).

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 Individuals with Disabilities Education Act 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 alleges four claims (issues) in the complaint, some of which are sufficient and some which are insufficient. Further, in his complaint, Student offers approximately six pages of “factual allegations,” detailing various facts and issues relating to various individualized education program (IEP) offers from 2008 through 2011. These factual allegations are incorporated by Student in some of the issue statements. The issues are discussed below.

Issue Number 1. Here, Student alleges a denial of a free appropriate public education (FAPE) during the 2008-2009 school year (SY) including the extended school year (ESY) period, because District: a) failed to develop an IEP that offered the Student a FAPE; b) failed to obtain all of Student’s records from the prior school district; c) failed to make a clear written offer; d) implemented services without the Parent’s consent; and e) failed to implement material provisions designated by the IEP.

Under this issue, sub-issues (a), (b) and (c) are found to be sufficiently pled based on the issue statement and the supporting factual allegations. However, sub-issues (d) and (e) are found to be insufficiently pled, because Student fails to provide adequate information regarding the sub-issues. Specifically, Student fails to identify the services that District implemented without the

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).

parental consent, and the “material provisions designated by the IEP” that District did not implement.

Issue Number 2. This issue also alleges a denial of a FAPE during the 2008-2009 SY including the ESY period because: a) the placement and services in the September 26, 2008 IEP were not appropriate and the “material provisions” were not implemented; b) District failed to initiate a request for due process hearing when parents refused to consent to ESY services for Student; and c) District failed to request a reassessment of the Student when District staff believed that Student was regressing and/or becoming stagnant in his academic performance and behavior.

Sub-issues (b) and (c) are found to be sufficiently pled. However, because sub-issue (a) fails to identify which “material provisions” District failed to implement, sub-issue (a) is found to be insufficiently pled.

Issue Number 3. Issue Number 3 has been reframed, for clarity. In this issue, Student alleges a denial of a FAPE during the 2009-2010 SY including the ESY period because District: a) did not initiate a due process hearing after the parents expressed their disagreement to the IEP offer; b) did not request reassessment even though District noted Student’s sensory and behavioral issues in Student in the IEP addendum; and c) did not offer Parents training, academic tutoring, student counseling, or in-home supports in the IEP addendum. As reframed, Issue Number 3 is found to be sufficiently pled.

Issue Number 4. Here, Student alleges a denial of a FAPE during the 2010-2011 SY including the ESY period because: a) District proposed to change Student’s placement from the general education/resource specialist support services (RSP) combination setting to a more restrictive special day class setting without providing parents a prior written notice regarding this proposed change; b) District failed to conduct additional evaluations, failed to prepare a prior written notice denying parents’ request for additional evaluations, and failed to request a hearing when parents expressed their disagreement with the March 8, 2011 multidisciplinary assessment and the IEP offer; c) District failed to properly implement all supplementary aids and services in the regular education environment; and d) District’s multidisciplinary assessment was “faulty,” thus, unreliable as the basis for the placement in the SDC.

Sub-issues (a) and (b) are found to be sufficiently pled based on the issue statement and the supporting factual allegations. However, sub-issues (c) and (d) are found to be insufficiently pled, because Student fails to provide adequate information regarding the supplementary aids and services that District failed to properly implement in the regular education setting. Further, Student fails to identify the “fault” with District’s multidisciplinary assessment, and how or why the assessment was not reliable.

Therefore, as discussed above, Issues 1(a) through (c), 2(b) and (c), 3(a) through (c), and 4(a) and (b) are sufficiently pled to put District on notice as to the basis of Student’s claims, to respond to the complaint, and to participate in a resolution session and mediation.

With regard to Issues 1(d) and (e), 2(a), and 4(c) and (d), Student fails to allege sufficient facts relating to the problems. Therefore, Student has failed to state sufficient facts supporting these allegations, and thus, the allegations/sub-issues are insufficiently pled.

Regarding proposed resolutions, Student seeks: a) reimbursement for the expenses incurred by parents as a result of District's failure to provide Student with a FAPE; b) compensatory education placement and services; c) any other reasonable and just reliefs as determined by the Administrative Law Judge, and that d) Student be deemed the prevailing party. The proposed resolutions are adequate, and they met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues 1(a) through (c), 2(b) and (c), 3(a) through (c), and 4(a) and (b) of student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 1(d) and (e), 2(a), and 4(c) and (d) of Student's complaint 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 1(a) through (c), 2(b) and (c), 3(a) through (c), and 4(a) and (b) in Student's complaint.

Dated: May 9, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

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