

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2011040831

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 22, 2011, Michelle Ortega, attorney for Student filed a Due Process Hearing Request¹ (complaint) naming the William S. Hart Union High School District (District).

On May 2, 2011, Ian T. Wade, attorney for 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

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 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’s complaint alleges four claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issue 1A: Student alleges that District failed to offer appropriate placement and supports. Student claims in her supporting facts that Student’s placement and District’s failure to implement Student’s health plan prevents her from obtaining any educational benefit.

Issue 1C: Student alleges that District failed to offer appropriate frequency, duration and type of designated instructional services. Here Student claims District ignored her speech and language, occupational therapy and physical therapy needs. Student provides a sufficient factual basis in support of her alleged denial of FAPE.

Issue 1D: Student alleges that District failed to offer appropriate, measurable and meaningful goals and objectives. Specifically, Student states that District offered no goals in speech and language and occupational therapy.

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).

Issues 1A, 1C, and 1D are sufficiently pled to put District on notice as to the basis of Student's claims. The complaint sets out the issue and provides sufficient facts for District to be able to prepare a defense and participate in a resolution session and mediation.

With regard to Issue 1B, Student fails to allege facts that support the claim that District failed to offer her appropriate placement in the least restrictive environment. The facts pled in support of Student's claim leave it unclear whether Student's environment was not sufficiently restrictive or too restrictive to offer her educational benefit. For example, Student claims that she has come home from school with elongated bruises on her back and arm areas and requires that an aide be seated directly next to her at all time of the day. When the aide is absent Student will destroy the entire classroom, hit staff and peers and throw herself to the floor in a violent manner. It is unclear in this example whether Student's reaction is caused by the environment being too restrictive or whether this can be remedied by providing Student with a more restrictive environment. Therefore, Student has failed to state sufficient facts supporting this claim related to the least restricted environment, and the claim is insufficient.

ORDER

1. Issues 1A, 1C, and 1D of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 1B of Student's complaint is 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 1A, 1C, and 1D in Student's complaint.

Dated: May 3, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings

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