

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALAVERAS UNIFIED SCHOOL
DISTRICT AND CALAVERAS COUNTY
SELPA

OAH CASE NO. 2012010499

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 19, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming the Calaveras Unified School District (District) and the County of Calaveras SELPA (SELPA) (jointly Respondents).

On January 31, 2012, Respondents timely 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 (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, a 19-year old high school graduate, alleges two claims in his complaint that are insufficiently pled as discussed below. Student’s complaint is insufficiently pled in that it fails to provide Respondents with the required notice of a description of the problem and the facts relating to the problem.

Student’s Issue 1: “Denial of Free Appropriate Public Education 2008-2011”

Student makes contradictory allegations regarding whether he did, or did not, have an individualized education program (IEP) in place while he attended high school from 2008 through 2011, and prior to graduating with a regular education diploma in 2011. Student describes himself as having been, for four years, a “full-time high school special education student [evidently] with no officially designated handicap.” (Brackets in original).

Student summarizes the nature of the problem at Issue No. 1 as (1) District failing to assess him for “learning disabilities” from 2008 through 2011, (2) District failing to offer him services regarding his “one and only identified disability, Attention Deficit Disorder

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).

(“ADD”) and denying him “ADD accommodations,” and (3) after Student’s ADD was brought to District’s attention, Respondents failing to “rehabilitate” Student’s “IEP content” or his “ADD handicap.”

By way of facts related to the problem, Student alleges that due to the lack of assessments, “no effective IEP could be written or followed” and “[a]t no time from 2008 through 2011, did [District] attempt to offer [Student] an effective Individual Education Program (IEP) as [District] had little or no knowledge of [Student’s] handicap (ADD) or how to rehabilitate the obvious symptoms of classic ADD presentation” and “as [District] had no idea that [Student] had a moderate to severe ADD, there was no plan in his IEP to objectively measure its impact on [Student’s] academic career or behavior.” He concludes that the District “didn’t have a plan or a plan to get a plan.” Although Student alleges ADD as a qualifying disability, his complaint lacks factual allegations specifying why he needed special education and related services to access the high school curriculum, particularly in light of the allegations that he obtained a high school diploma with the interventions provided, if any.

Student’s facts are contradictory, alleging both that he was not offered an IEP and that he had an IEP lacking objective measurements of progress. The complaint does not contain any specific contentions regarding how District determined that Student was not eligible for an IEP, or alternatively, how the IEP team determined the elements of his IEP and how District staff failed to implement Student’s IEP in whole or in part. It cannot be determined from reading the complaint if Student’s claim stems from a failure by District to identify him as a student eligible for special education, or from failure to offer and implement appropriate services as part of his IEP(s). Therefore, Issue 1 is not sufficient.

Student alleges at Issue 1 that his school of attendance, District and SELPA failed to rehabilitate Student. However, Student fails to allege why the District or SELPA needed to rehabilitate Student for him to receive a FAPE, and the basis of Respondents’ obligation to rehabilitate Student related to his disability. Therefore, Issue 1 is also insufficient on this ground.

In sum, the complaint’s lack of specific factual contentions regarding what was done, by whom, or the dates when such action or inaction occurred, renders Issue 1 broadly insufficient as to the alleged roles and responsibilities of the named Respondents.

Student’s Issue 2: “ Failure to Notify [Student] in Writing of Special Education Extension”

Student alleges at Issue 2 that the school, District and SELPA administrators failed to notify him that by graduating from high school, Student would “forfeit up to two years of education that may have been instrumental in rehabilitating his ADD” and in preparing him for the higher academic standards of college or a vocational school. Student contends that Respondents’ administrators “fabricated shortcuts and unlawful education detours in an

effort to expel [Student]...[and] diminish [Student's] rights to special education opportunities.”

Student alleges as facts related to Issue 2 that his IEP team never took seriously a November 2010 report on extensive assessments conducted by the California Department of Education (CDE), nor implemented the report's recommendations in Student's last semester of high school. The complaint concludes that Student's diploma “did not meet California State standards, period.”

In Issue 2, Student alleges that his IEP team did not properly consider the CDE assessments, but fails to allege what action the Respondents took, or failed to take, regarding the assessments that violated Student's procedural rights and consequently denied Student a FAPE. For this reason, Issue 2 is insufficient.

The allegations of Issue 2 suggest that Student had an option to refuse to graduate for purposes of extending his entitlement to special education and related services, and that Respondents' failure to notify him of this option was a procedural violation that denied him a FAPE. However, Student fails to allege why he did not meet the criteria for a regular education diploma and would have continued to be eligible for special education and related services, and for that reason Issue 2 is insufficient.

A student who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the student in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Student is strongly encouraged to contact OAH for assistance if he intends to amend his due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code section 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹

3. 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.

⁸ Ed. Code, § 56505.

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

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: February 1, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings