

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060277

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT; ORDER ON MOTION
TO DISMISS

On June 5, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent.

On June 20, 2012, District filed a Notice of Insufficiency (NOI) and Motion to Dismiss as to Student's complaint.

This Order addresses both the NOI and the Motion to Dismiss. As discussed below, the NOI is granted in part, as to Issue six only, and the Motion to Dismiss is denied.

NOI

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

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).

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

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 alleges six issues. Issue one addresses failure to provide classroom-based behavioral support; Issue two addresses failure to provide non-public agency (NPA) in-home services; Issue three addresses failure to compute compensatory hours for services not provided; Issue four addresses failure to develop appropriate goals in the area of speech; Issue five addresses failure to provide a functional communication system; and Issue six addresses failure to revise instructional strategies when needed.

With respect to Issues one through five, the complaint is sufficient. It contains background facts and sufficient information to impart an awareness and understanding of the issues forming the basis of the complaint. With respect to Issue one, it alleges that District failed to collect behavioral data, develop an appropriate behavior plan, and failed to develop appropriate IEP goals to address independence and on-task behavior, resulting in Student being completely dependent on prompts. With regard to Issues two and three, it alleges that in Student’s IEP, District offered NPA in-home services that have not actually been

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).

provided, and that parent's request for a computation of such hours owed has not been responded to. With respect to Issues four and five, the complaint alleges that Student's social skills and speech deficits have been assessed in the areas of spontaneous communication, formation of sentences with appropriate grammar, and pronunciation of speech sounds, yet these needs have not been addressed by appropriate IEP goals nor by an appropriate offer of assistive technology. Thus with respect to Issues one through five, the complaint contains sufficient information to impart an awareness and understanding of the issues forming the basis of the complaint.

With respect to Issue six, the complaint is insufficient. It generally alleges failure to revise instructional strategies, and makes allegations regarding the failure to revise Student's goals to address his actual performance, however it contains no information regarding what areas of need are at issue or what goals were inappropriate. Thus it is not clear whether Issue six relates to the same or different goals and areas of need as are addressed in the other issues. As so pled, Issue six does not provide District with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Motion to Dismiss

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

District argues in its Motion to Dismiss that Issues one (failure to provide classroom-based behavioral support) and Issue three (failure to compute compensatory hours for IEP services not provided) fail to state a claim and must be dismissed. The contention is not well taken. Issues one and three allege matters "relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" and are therefore within OAH's jurisdiction.

ORDER

1. Issues one through five of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue six 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 one through five in Student's complaint.
6. District's Motion to Dismiss is denied.

Dated: June 25, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

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