

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LANCASTER SCHOOL DISTRICT.

OAH Case No. 2014100861

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 16, 2014 Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request¹ (complaint) naming the Lancaster School District as respondent. On October 28, 2014, Lancaster filed a Notice of Insufficiency as to Student’s complaint.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, 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.)

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

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).

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 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

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

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).)

DISCUSSION

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.

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).

Student's complaint alleges five problems or claims in the complaint, one of which is sufficient and some which are insufficient. The issues are discussed below.

Problem one alleges that Parent's right to participate in the Individualized Education Program decision-making process was denied when Lancaster IEP team members ignored Parent's concerns at a meeting she requested to determine if Student's placement should be changed to home schooling or different school location. In essence, Student is alleging that Lancaster had predetermined Student's IEP in refusing to hear and discuss parental concerns. Student has alleged sufficient facts to put Lancaster on notice what is being alleged that would permit it to participate in a resolution session, mediation and hearing.

Lancaster contends that the proposed resolution has no nexus to the issue being alleged. Student's proposed resolution for problem one is to have Student's educational placement changed, preferably to a home school program.⁸ Student's proposed resolution is related to problem one.

Problem two alleges that Student's current placement fails to meet his unique needs as Lancaster fails to render appropriate services to deal with Student's anxiety by school staff. Student fails to allege any facts to support in what matter the IEP is deficient in meeting Student's anxiety at school or how Lancaster has failed to appropriately implement the IEP. Problem two is insufficient to put Lancaster on notice in what manner it has failed to provide Student a FAPE.

In problem three, Student alleges that his teacher mistreats Student. Student only makes general allegations rather than specifically lay out facts as to when and what manner the actions of the teacher have adversely affected Student and his ability to access the curriculum. Additionally, problem three fails to allege a violation of the IDEA. It is unclear whether Student is averring whether the teacher is not qualified under the IDEA to teach a student with disabilities. Problem three is insufficient to put Lancaster on notice in what manner it has failed to provide Student a FAPE.

Problem four states that: "The IEP team told me they won't recognize my son's Autism at all!" Student fails to make a specific allegation to specify what Student is alleging and in what manner Student's autism is not being recognized (i.e., inappropriate services and placement) so as to be a denial of FAPE under the IDEA. Problem four is too vague to permit Lancaster notice of what is being alleged.

Problem five is a long rambling complaint of actions of a vice principal which are unclear. Problem five does not attempt to allege "any matter relating to the identification,

⁸ Although Student states that Lancaster personnel should be punished for neglecting Student's needs when he is anxious at school, this appears to support Student's request for a change in placement.

evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” Thus, problem five fails to allege any denial of FAPE.

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.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Problem one of Student’s complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Problems two, three, four and five 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).¹⁰
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 problem one in Student’s complaint.

DATE: October 31, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

9 Ed. Code, § 56505.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.