

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014110615

ORDER GRANTING DISTRICT'S
NOTICE OF INSUFFICIENCY WITH
LEAVE TO AMEND, AND VACATING
DATES

On November 10, 2014 Student filed a Due Process Hearing Request¹ (complaint) naming Santa Monica-Malibu Unified School District.

On November 25, 2014, District filed a Notice of Insufficiency (NOI) as to Student's complaint, contending that the complaint failed to allege facts sufficient to explain how District denied Student a free appropriate public education (FAPE) after, as alleged in the complaint, Parents on November 15, 2013 revoked their consent to Student's continuing eligibility to receive special education and related services through an IEP from the District.

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 one issue; namely, whether District “denied Student a FAPE by failing to offer or provide Student with a FAPE for the period beginning November 15, 2013 when parents revoked their consent to Student’s continuing eligibility under the IDEA and after District properly exited Student from special education.” The complaint alleges that Student is 17 years old, attending 12th grade general education classes at Malibu High School. He has been diagnosed with autism, Asperger’s disorder, post-traumatic stress disorder and attention deficit hyperactivity disorder, and was found eligible for special education in kindergarten under the eligibility category of speech and language impairment, later changed to other health impairment.

Prior to November 15, 2013, Student received special education and related services from District. On November 15, 2013, Parents revoked their consent to Student’s continuing eligibility to receive special education and related services through an IEP. The complaint alleges that the District then promptly and properly exited Student from special education, and enrolled Student as a general education student at Malibu High School. The complaint then alleges, with no factual explanation whatever, that District has failed to provide Student

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).

with a FAPE from November 15, 2013 through and including the date Student filed the complaint, and that Student has suffered educational loss and an increased learning gap between Student and his peers. Student seeks unspecified compensatory education and “other-type relief.”

Student’s complaint is insufficiently pled in that it fails to state a sufficient description of the problem and the facts relating to the alleged District failure to provide Student a FAPE to provide an awareness and understanding of the issues forming the basis of the complaint, and District therefore cannot reasonably be expected to know how to prepare for the hearing and how to participate in resolution sessions and mediation. In particular, the complaint fails to state when and why, after District allegedly “promptly and properly” exited Student from Special education, it was required to provide Student special education placement and related services, what placement or services it failed to provide, and how the failure to provide the placement or services deprived student of an educational benefit.

ORDER

1. Student’s complaint is insufficiently pled under title 20 United States Code 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).⁸
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.
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.

DATE: November 25, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings

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