

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIPATRIA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015100936

ORDER OF DETERMINATION OF
PARTIAL INSUFFICIENCY OF DUE
PROCESS COMPLAINT

On October 23, 2015, Student filed a Due Process Hearing Request¹ (complaint) naming Calipatria Unified School District.

On November 4, 2015, Calipatria filed a Notice of Insufficiency 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

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 a total of 11 claims, 6 of which he claims are procedural, and 5 of which he claims are substantive.⁸ Calipatria challenges 4 of these claims as being insufficiently pled. Student’s complaint has been reviewed, and it is found that some of the claims are sufficiently pled, and others are insufficiently pled. The challenged issues are discussed below.

Calipatria claims that Student’s procedural issue I(a) is insufficiently pled. Issue I(a) presents a claim that Calipatria committed a procedural violation by not convening an individualized educational program team meeting within 30 days of Parent’s request for one. However, the complaint does not contain any facts which state a date that Parent requested an IEP team meeting, and any specific allegation of a time period where one was not

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).

⁸ Student contains Issue I which alleges six procedural claims, and Issue II which alleges five procedural claims.

convened within the 30-day requisite timeline. Therefore, Issue I (a) is not sufficiently pled to put Calipatria on notice as to the basis of this claim. If Student wishes to pursue this claim, he must amend his complaint by stating the date or dates when Parent requested an IEP team meeting, and also allege that a meeting was not timely convened by Calipatria.

Calipatria also claims that Student's procedural issue I (c) is insufficiently pled. In regards to this issue, Student claims that Calipatria committed a procedural violation by not responding in any way to Parent's request for an individual educational evaluation. However, the complaint does not contain any facts that support this claim, as there are no allegations at all that Parent ever requested an independent educational evaluation. Therefore, Issue I (c) is not sufficiently pled to put Calipatria on notice as to the basis of this claim. If Student wishes to support this claim, he must amend the complaint to reflect the date or dates when Parent requested an independent educational evaluation, and Calipatria did not respond in a legally sufficient manner.

Calipatria claims that Student's Issue I (e) is insufficiently pled. Issue I (e) states a claim that accommodations and modifications discussed at IEP team meetings are not reflected in the operative IEP. Student discusses this issue beginning on page 3, line 23, continuing to page 4, line 2, and page 5, lines 20-23. Calipatria argues that there is evidence that some of these accommodations and modifications were addressed at IEP team meetings, but were not subsequently incorporated into the operative IEP because they were not necessary. However, this is just a factual dispute, not a showing of insufficient pleading. Accordingly, this issue is sufficiently pled to put Calipatria on notice as to the basis of this claim.

Calipatria also challenges one of Student's substantive claims, Issue II (b) which alleges that Calipatria failed to provide him with an "appropriate placement." Throughout the factual portion of the complaint, Student claims his behavior support plan was not amended as it should have been, which resulted in him incurring numerous disciplinary penalties. He also claims that he did not make sufficient progress in meeting goals, and obtained poor grades in his classes. These facts support an inference that Student's placement was not appropriate. It is not necessary for Student to articulate in his complaint exactly what placement he required during the time period encompassed by the complaint, in order to have the issue deemed sufficiently pled. There are sufficient facts alleged to put Calipatria on notice that the placement may have been inappropriate. Of course, Student will need to present evidence at hearing to support this claim in order to prevail in this regard, but at this stage of the proceeding, the facts alleged are sufficient to put Calipatria on notice as to the basis of this claim.

Student's Issue II (c) is a claim that he was denied a substantive FAPE because Calipatria failed to "comprehensively assess him in all areas of suspected disability." Calipatria argues that this issue is not sufficiently pled. On pages 2 and 3 of the complaint, Student claims that Parent requested that Student be evaluated by the school psychologist in relation to his behavior support plan, and this did not occur for several months. Even then, Student alleges that Calipatria did not provide him with a behavior support plan that would

address his maladaptive behaviors. Further on page 3, lines 13-17, Student states facts that, if proven, might sustain a finding that Calipatria's assessments were not sufficiently comprehensive, and did not address all areas of suspected disability. The complaint is sufficiently pled to put Calipatria on notice as to the basis of this claim.

Although most of the issues in Student's complaint are deemed sufficient, nothing precludes the Administrative Law Judge conducting the prehearing conference in this matter from further refining the issues in consultation with the parties.

ORDER

1. Issues I (a), and I (c) of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D). All other claims in Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

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.

4. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues I (b), (d), (e), and (f), and II (a), (b), (c), (d), and (e) in his complaint.

DATE: November 5, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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