

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016030432

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 9, 2016, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming Torrance Unified School District. District received the complaint on March 9, 2016. On March 24, 2016, District timely filed a Notice of Insufficiency as to Student's complaint. Student filed no opposition to the Notice of Insufficiency.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student’s complaint alleges three “Problems.” Problems 1 and 3 are similar, in that they allege that District did not provide any services to Student as of November 2015, when he was supposed to be receiving home hospital instruction. Problem 1 alleges that this failure constituted a deprivation of a FAPE, and Problem 3 alleges that this failure constituted discrimination. Problem 3 also alleges that, since November 2015, District has failed to hold an Individualized Education Program team meeting at Parents’ request. Problem 2 alleges that District provided home hospital services to Student in 2013 and 2014, and therefore it should also provide Student home hospital services based on the documentation provided to District in September and November 2015 to support such services.

District contends that Student’s complaint is confusing as to the time that he alleges he enrolled in the District (November 2015), as compared to the time period during which he alleges District provided him home hospital instruction (2013-2014). District also contends that Student did not describe the alleged IEP services he did not receive, or how they should have been delivered, and when and how he requested a meeting of the IEP team.

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint regarding Problems 1 and 3. Both of those Problems refer only to November 2015 and thereafter. The complaint alleges that Student did not receive any services, and there is no need for the complaint to identify how and when Student requested an IEP meeting. Ultimately, Student’s complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

The facts alleged in Student’s complaint are insufficient to put District on notice of the issues forming the basis of the complaint regarding Problem 2. The facts alleged in Problem 2 consist of nothing more than an argument in support of the claims alleged in

Problems 1 and 3. Problem 2 does not allege any facts that would support a separate claim for any portion of the years 2013, 2014, or 2015.

Therefore, Student's statements of his claims in Problems 1 and 3 are sufficient, and Student's statement of his claims in Problem 2 is insufficient.

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. (Ed. Code, § 56505.) Parent is encouraged to contact OAH for assistance if he intends to amend the complaint.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Problem 2 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).²
4. The amended complaint shall comply with the requirements of title 20 United State Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of the Order.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Problems 1 and 3 in Student's complaint.

DATE: March 28, 2016

DocuSigned by:

Elsa H. Jones

ELSA H. JONES

Administrative Law Judge
Office of Administrative Hearings

² The filing of an amended complaint will restart the applicable timelines for a due process hearing.