

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013090780

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 23, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request¹ (complaint) naming the East Side Union High School District (District) as respondent.

On October 8, 2013, the District filed a Notice of Insufficiency (NOI) 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 six claims in the complaint, which are all insufficiently pled as discussed below. Student’s complaint fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

Issue One contends that Student has been the victim of physical and emotional abuse and harassment by her classmates and general education students. Student fails to allege any facts to support her contention. Basically, Student alleges that she has been a victim of bullying by other students. As a resolution, Student requests that her teachers and aides review the record and her IEP to know what Student needs.

Issue Two contends that a student, Jessica, manipulated Student to give her Student’s Nintendo game (game), which was used as a learning tool, and requests that the Post Senior Program return the game. In the resolution portion, Student alleges District staff was aware of the manipulation. Student’s resolution is for the District to return the game.

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).

Issue Three alleges that Student has missed four months from school, including receiving medical attention and psychological counseling, resulting from the negligence and teasing by District staff. Student requests resolution by having Student graduate from the program, and that the District provide additional supervision during times Student participates in activities with general education students.

In Issue Four, Student contends that the District has ignored letters sent by Student's parent (Parent). The proposed resolution is for an order by OAH to require the District to explain the reasons for the District's failure to consider Parent's letters.

In Issue Five, Student contends that no one is able to tell Parent where Student is when she picks her up at the end of the school day. The Proposed resolution is for District staff to give concrete and truthful answers to Parent's inquiries.

In Issue Six, Student contends that Student needs to rest after 20 minutes of walking. Apparently the allegation is that when the program arranges field trips, Student is not permitted rest time. The proposed resolution is for Parent to be given the name and address of each location to be visited so that Parent can train Student.

In the NOI, the District, in general, contends that the complaint "fails to state necessary facts to establish sufficient claims under the IDEA" (Individuals with Disabilities Education Act). The District also avers that the issues alleged in the complaint are deficient in that the District is unable to determine the nature of the claims and how it has failed to provide Student with a free appropriate public education.

Issue One is not sufficient as it fails to allege specifically when the alleged incidents occurred and how District staff was responsible for the problems (i.e., that staff was aware of the bullying occurring).

Issue Two is also not sufficient. Student has failed to allege facts to demonstrate that the Nintendo game was part of Student's IEP and in what manner District staff had any responsibility for the student to manipulate Student into giving her game away.

Issue Three contends that District staff permitted Student to be the victim of harassment in the form of teasing by her teacher and Nenna Mand, who is unidentified. Issue Three is insufficient in that it fails to allege any facts (a) who Nenna Mand is, (b) when and how the teacher and Nenna Mand teased Student, and (c) how their negligence caused emotional injury to Student. Additionally, Student must demonstrate in what manner she suffered emotional injury for these actions.

Issue Four is not sufficient. Student has failed to allege any facts as to when the letters were sent to the District and to whom, the contents of these letters, and in what manner the District has violated the IDEA by ignoring the letters.

Issue Five is insufficient in that it fails to allege any facts including when these incidents occurred and how District has violated the IDEA.

Issue Six is insufficient as Student fails to allege whether Student's medical condition and whether Student's Individualized Education Program (IEP) provides accommodation to permit Student to have rest breaks after walking or doing physical activities for a period of 20 minutes.

The District also contends that Student's proposed resolution for Issue One is not sufficient. 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).) The Issue One proposed resolution stated in Student's complaint is not well-defined. The request to have staff review the record and IEP is vague and insufficient as OAH must specify to the District what is specifically required to be done.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section 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).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 complaint will be dismissed.
5. All dates previously set in this matter are vacated.

⁸ Ed. Code, § 56505.

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

Dated: October 9, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings