

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FALLBROOK UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013100130

ORDER DENYING NOTICE OF
INSUFFICIENCY OF AMENDED DUE
PROCESS COMPLAINT

On September 30, 2013 Student filed a Due Process Hearing Request¹ naming Fallbrook Union High School District (District). On April 2, 2014, Student's Motion to Amend Complaint was granted and Student's amended complaint (amended complaint) was deemed filed on April 2, 2014.

On April 17, 2014, District filed a Notice of Insufficiency (NOI) as to Student's amended 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 requirements prevent vague and confusing complaints, and promote fairness by providing the

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).

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 amended complaint alleges ten issues, along with proposed resolutions applicable to all issues.

In Issue 1, Student alleges District denied him a free and appropriate public education (FAPE) by failing to timely evaluate him during the 2011-2012 school year despite continued requests by his parents to determine if Student qualified for special education. Student alleges that despite his parents’ requests for evaluation and Student’s extreme academic difficulties during the 2011-2012 school year, District did not evaluate him until June 2012. Issue 1 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 2, Student alleges that in the Spring of 2012, District denied him a FAPE by failing to find him eligible for special education services following evaluation by the District. Student alleges that he was failing four classes during the 2011-2012 school year, that his scores on the assessments indicated that he was at-risk in numerous areas, that he was reported to have Attention Deficit Hyperactivity Disorder, and that he should have been

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).

found eligible for special education as Other Health Impaired (OHI). Issue 2 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 3, Student alleges District denied him a FAPE by failing to assess him in all areas of suspected disability. Student alleges District failed to evaluate him in the area of mental health despite the fact District was informed by Student's parents prior to June 2012 that Student might have mental health issues which interfered with his ability to learn. Issue 3 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 4, Student alleges that on June 11, 2013 District denied him a FAPE by failing to have the appropriate district staff attend the meeting to determine eligibility, and that the team did not consider all available information in its eligibility determination. Issue 4 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 5, Student alleges District denied Student a FAPE during the 2012-2013 school year by failing to find him eligible for special education and by failing to offer him special education services and supports. Student alleges District did not address his attention and executive functioning difficulties, including his distractibility and slow processing speed, and, as result, Student struggled academically. Issue 5 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 6, Student alleges District failed to include specific and accurate present levels of performance in the August 30, 2013 IEP and by failing to include information about Student's needs as detailed in the independent educational evaluation. Student alleges that although he had failed numerous classes, the August 30, 2013 IEP described his academic skills as "at or above grade level." Issue 6 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 7, Student alleges District denied him a FAPE by failing to include an appropriate transition plan in the August 30, 2013 IEP. Student alleges that the IEP was incomplete in that the "Post Secondary Goals: Employment" section was left completely blank despite the fact that section was marked "required," and that the IEP failed to offer appropriate post-secondary goals and services. Issue 7 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 8, Student alleges District denied him a FAPE by offering services in the August 30, 2013 IEP which were not specific. Student alleges District did not describe the frequency of services; that District offered specialized academic instruction but did not specify the amount of time or nature of the instruction; and that it is unclear how the services

are tailored to Student's needs. Issue 8 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 9, Student alleges District prevented his parents from meaningfully participating in the IEP process by failing to timely provide Student's educational records to his parents in June 2013. Student alleges that only after a second request for records was made by his parents did District provide certain progress reports, teacher's notes and an IEP document dated June 11, 2012. Issue 9 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 10, Student alleges District denied Student a FAPE by failing to properly respond to Student's June 2013 request for an independent educational evaluation in the area of mental health. Student alleges that in June 2013, his parents requested two independent educational evaluations, namely, a neuropsychological evaluation and a mental health evaluation. District provided an independent neuropsychological evaluation, but did not provide a mental health evaluation. Student alleges District was required to provide the independent mental health evaluation or file for due process. Issue 10 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

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 proposed resolutions stated in Student's amended complaint are sufficiently defined. Student's proposed resolutions request reimbursement for tutoring, 200 hours of tutoring by a non-public agency, and cognitive training in executive functioning skills to address Student's needs. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. The amended complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: April 21, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings

