

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

JEFFERSON UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2014041162

ORDER DENYING NOTICE OF
INSUFFICIENCY

On April 28, 2014, Student filed a Due Process Hearing Request¹ (complaint) naming Jefferson Union High School District (District).

On May 8, 2014, District timely 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 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 complaint alleges that District denied Student a FAPE since August 12, 2012. Specifically, the complaint alleges that Student has autism and that District conducted an IEP meeting on August 12, 2012 without Student’s parents and without Student’s providers from his non-public school placement, Arbor Bay School. Student alleges that without parental participation and without the participation of Student’s providers, District offered Student placement at Stern School in San Francisco. Student also alleges that District failed to hold any IEP meeting since August 12, 2012. Student’s proposed resolution is for District to reimburse Student’s parents for the tuition at Arbor Bay School since the start of the 2012-2013 school year and for all related services, including transportation, speech language therapy, occupational therapy, and counseling. The complaint states Student’s name and date of birth, the Student’s residence address and indicates that although he resides within District’s territorial limits, he attends a non-public school.

A review of the complaint shows that Student provided ample “facts related to the problem” to provide District the requisite “awareness and understanding of the issues forming the basis of [Student’s] complaint.” Student alleges that his and his parents’

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).

procedural rights were violated by District holding an IEP meeting without his parents or his non-public school providers in attendance and by District failing to hold an IEP meeting since August 12, 2012. Student alleges that District's offer of placement, Stern School, was not appropriate to meet his unique needs in the areas of academics, communication skills, attention and focus, organization, and socialization.

In sum, Student's complaint identifies the issues, adequate related facts about the problem(s), and proposed resolutions to permit District to respond to the complaint and participate in a resolution session and mediation. Accordingly, the complaint is sufficient.

ORDER

1. The 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: May 9, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings