

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAWTHORNE SCHOOL DISTRICT, LOS
ANGELES COUNTY DEPARTMENT OF
EDUCATION AND LOS ANGELES
UNIFIED SCHOOL DISTRICT..

OAH CASE NO. 2014050226

ORDER OF DETERMINATION OF
INSUFFICIENCY OF FIRST
AMENDED DUE PROCESS
COMPLAINT AS TO HAWTHORNE
SCHOOL DISTRICT AND LOS
ANGELES COUNTY DEPARTMENT
OF EDUCATION

On May 29, 2014 Student filed a First Amended Due Process Hearing Request¹ (amended complaint) naming Hawthorne School District (Hawthorne), Los Angeles County Department of Education (LACOE), and Los Angeles Unified School District (LAUSD).

On June 9, 2014, Hawthorne filed a Notice of Insufficiency (NOI) as to Student's complaint. On June 9, 2014, Student filed an Opposition to Hawthorne's NOI.

APPLICABLE LAW

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.² 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.³

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)(7)(A)(ii)(III) & (IV).

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

DISCUSSION

On May 19, 2014, OAH issued an Order of Determination of Insufficiency finding Student’s original complaint insufficient, with leave to amend. Pursuant to the May 19, 2014 NOI Order, OAH determined Student’s allegations were not broken down by each school district. Instead, Student alleged multiple issues against multiple parties which were simply designated “District.”

Student’s amended complaint alleges a mixed bag of claims which are all still insufficiently pled for the same reasons as previously determined.

1. Student’s amended complaint continues to group all educational parties collectively as “the Districts” or “as to all Districts.” As a result, the amended complaint does not provide notice as to which of the three educational parties the “group” allegations apply. Further, while Student argues that Hawthorne and LACOE acted together, her complaint does not alleged this. Rather, as example, Student alleges her September 27, 2012 IEP offered placement at LACOE was not FAPE. The allegation does not indicate whether Hawthorne or LACOE made the offer of FAPE or whether Hawthorne or LACOE failed to assess. Further, Student fails to provide a sufficient factual claim to support whether Hawthorne or LACOE were required to conduct a Functional Analysis Assessment, or why either of them was required to offer a non-public school in order to provide Student a FAPE.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

2. LAUSD has not joined in this NOI. Therefore, no determination is made with regard to the issues occurring in the 2013-2014 school year while Student attended school in LAUSD. Further, the issues which collectively referred to “the Districts” now only refer to LAUSD, as they are insufficient as to Hawthorne and LACOE.

ORDER

1. Student’s complaint as to Hawthorne School District and Los Angeles County Department of Education is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. No determination of sufficiency has been made regarding Los Angeles Unified School District, therefore, those allegations arising after September 2013, remain as pled.

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁷

4. 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.

5. If Student fails to file a timely amended complaint, the complaint will be dismissed as to Hawthorne School District and Los Angeles Department of Education.

6. 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.

7 If Student fails to file a timely amended complaint, the hearing shall proceed only on those Issues arising after September 2013, naming Los Angeles Unified School District.

DATE: June 13, 2014

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

⁷ The filing of an amended complaint will restart the applicable timelines for a due process hearing.