

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MIDDLETOWN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014060894

ORDER GRANTING NOTICE OF
INSUFFICIENCY WITH LEAVE TO
AMEND

On June 16, 2014 Student's parent filed a Due Process Hearing Request¹ (complaint) on Student's behalf naming Middletown Unified School District (District). On July 1, 2014, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is granted with leave to amend.

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 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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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).

⁴ 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.”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 handwritten complaint alleges Student’s name, birthdate, a post office box for his address, that he is in ninth grade, speaks English, and the name of a school of attendance that is not legible. Student lists District as the district of residence. Parents’ address is identified by a post office box. The complaint alleges that Student has been attending District on an inter-district transfer permit; that he has mental health issues that are addressed in an individualized education program (IEP), including a behavior implementation plan; that Student has been without a caseworker; and his IEP does not address his bipolar disorder. The complaint also alleges that “[school district that is not legibly written] has not been able to accommodate him.” As a proposed resolution, Student seeks an appeal of District’s decision to deny Student’s application for an inter-district transfer and asks that Student stay at District in high school.

Student’s complaint is insufficiently pled. It fails to provide District with the required notice of a description of a problem and facts relating to a problem that is related 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. In other words, Student must allege with specific facts what District did to deny him a free appropriate public education.

The only clear allegation, and related resolution, alleged in the complaint is that Student was denied an inter-district transfer for the next school year. The appeal of inter-district transfer decisions is governed by Education Code section 46601, and not under

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).

special education law. Such an appeal is not within the jurisdiction of the Office of Administrative Hearings.

Accordingly, the complaint is insufficient. Student may amend his complaint to allege issues supported by facts related to a proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to Student.

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 July 16, 2014.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed by the Office of Administrative Hearings.

5. All dates previously set in this matter are vacated.

DATE: July 2, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

⁸ Ed. Code, § 56505.

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