

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAWTHORNE SCHOOL DISTRICT.

OAH Case No. 2014090949

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 22, 2014 Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings, naming the Hawthorne School District.²

On October 7, 2014, Hawthorne timely filed a Notice of Insufficiency as to Student's complaint.³

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ 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).

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 Student also named the California Department of Education and State Superintendent of Schools Tom Torlakson as respondents. OAH dismissed them as parties in an Order dated October 7, 2014.

³ Hawthorne's NOI is part of a pleading in which it also moved to be dismissed as a party with regard to the five allegations raised in part one of Student's complaint, and also moved to dismiss some of Student's allegations as beyond the jurisdiction of OAH, and because it was not properly served with the complaint. Since this Order finds Student's entire complaint to be insufficient as to Hawthorne, its motions for dismissal are moot.

⁴ 20 U.S.C. § 1415(b) & (c).

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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

DISCUSSION

Hawthorne contends that Student’s entire complaint is insufficient as to it. Hawthorne contends that the first part of Student’s complaint, which contains five issues, is insufficient because all the allegations contained there pertain to the California Department of Education (CDE) and fail to allege any facts pertaining to Hawthorne.

The first four issues of part one of Student’s complaint specifically raise allegations that CDE failed to take certain actions. Since Hawthorne is not mentioned in these issues, the issues as written are insufficient as to Hawthorne.

⁵ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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 five of part one of the complaint states that a correct counting of speech therapy and counseling hours owed to Student was not properly done. The issue does not state whether it was CDE or Hawthorne who failed to make the correct count. The issue also fails to state when the count was done and what the difference in hours was. For these reasons, issue five of part one of Student's complaint is also insufficient as to Hawthorne.

Part two of Student's complaint contains eight issues. All issues appear to pertain to Hawthorne. In issue one, Student contends that Hawthorne "omits, denies, alters, does not provide, does not cooperate with the necessary records in the education of the student." Student fails to identify what information Hawthorne has denied, omitted, altered, or failed to provide to her or her parents. Student fails to state when and where these actions occurred, or failed to occur, or what specific records were involved. Student also fails to state if she or her parents made a request for records, when the request was made, and which records Hawthorne failed to provide. For these reasons, issue one of part two of Student's complaint is insufficient.

In issue two, Student alleges that she is not receiving a free appropriate public education because counseling hours are owed to her, speech therapy is based on old goals, and that accommodations are not being implemented and/or are being modified without the consideration of Student's parent. Student fails to identify which of her individual educational programs is at issue, what services are required for her in the IEP, how many hours of services are owed to her and when the hours should have been provided, and which of Student's accommodations is not being provided or has been modified. Student further alleges that Hawthorne is "filling IEP areas that belong to the parent." However, Student fails to explain to what areas of the IEP she is referring. For these reasons, issue two of part two of Student's complaint is insufficient.

Student alleges in issue three that there is a "possible fraud in grades." Student fails to identify which of her grades she believes is fraudulent, when she received the grade, and why she believes any fraud is involved. Issue three of part two of Student's complaint is insufficient.

In issue four, Student alleges that she is suffering from harassment and bullying. However, Student fails to state what the nature of the harassment and bullying is, when it occurred, whether she brought the issue to the attention of any Hawthorne staff, and what, if anything, was their response. Student also alleges in issue four that she needs individual and direct explanations and for her teacher to check her daily homework. However, Student fails to state any facts in support of her contentions. She does not state why she needs the requested assistance and why Hawthorne should be aware of her needs in those areas. Those these reasons, issue four of part two of Student's complaint is insufficient.

In issue five, Student alleges that her IEP was sent by facsimile without authorization. Student does not state who sent the IEP, to whom it was sent, when it was sent, and why sending it denied her a free appropriate public education. For these reasons, issue five of part two of Student's complaint is insufficient.

Student alleges in issue six that Hawthorne failed to protect the confidentiality of her personal information by taking a photograph of her and publishing it in the newspaper without consent. Student fails to state who took the photograph of her, when it was taken, the name of the newspaper in which it was published, or the date that it was published. Student also contends that personal information was provided to an independent therapist. Student fails to state what information was provided, who provided it, to which therapist it was provided, or when this occurred. For these reasons, the allegations contained in issue six of part two of Student's complaint are insufficient.

In issue seven, Student alleges that an i-Pad was offered to her for something called "SES tutoring." However, Student fails to state when this occurred, and why the offer of the i-Pad violates her rights to a free appropriate public education. If it was Student's intent to allege that Hawthorne offered her the i-Pad but then failed to provide it to her, Student must state that clearly. She must also present facts as to why she requires an i-Pad to access her education. For these reasons, issue seven of part two of Student's complaint is insufficient.

Student alleges in issue eight that she and her family have been retaliated against, bullied, and discriminated against by Hawthorne staff and other students. However, Student fails to state what these actions were, when they occurred, where they occurred, and which persons were involved. For these reasons, issue eight of part two of Student's complaint is also insufficient as pled.

All issues in Student's complaint fail to provide Hawthorne with the required notice of a description of the problems and the facts relating to them.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.¹⁰ Student's parent is encouraged to contact OAH for assistance if she intends to amend the due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

¹⁰ Ed. Code, § 56505.

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹¹

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. If Student's parent wishes to request the assistance of an OAH mediator in identifying the issues for an amended complaint, she should contact OAH.

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

DATE: October 15, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

¹¹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.