

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015010324

ORDER DETERMINING COMPLAINT
TO BE INSUFFICIENT IN PART

On January 7, 2015, Student filed a Due Process Hearing Request¹ (complaint) naming the Hemet Unified School District.

On January 12, 2015, Hemet timely filed a Notice of Insufficiency 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 contains two issues; Issue has three subparts. Issue 1(a) alleges that the only two goals Student has met from his individualized education program are those which are worked on in a small group. However, Student does give state what the date of his operative IEP is. He does not state what the two goals are that he has met and he does not state how many other goals he has, what they are, or what he believes the reason is for his failure to have met the remaining goals. Finally, Student fails to state what Hemet should have offered in its IEP that is different than what is presently contained in the program. For these reasons, Student’s Issue 1(a) is insufficient as stated.

In Issue 1(b) Student alleges that his IEP contains ninth grade goals and that without intervention he will not be able to graduate high school. However, Student does not state what grade he is in, what grade level his goals should be at, or why he believes the present level of the goals is not appropriate for his rate of learning. Nor does Student state what type of interventions he believes Hemet should have offered in his IEP in order for him to receive a free appropriate public education. For these reasons, Student’s Issue 1(b) is insufficient as stated.

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).

In Issue 1(c), Student contends Hemet is failing to offer individual tutoring by someone “certified” as required by Student’s IEP. Student again has failed to identify the IEP in question. Further, there is a missing word from the issue. It is unclear whether Student’s IEP requires a certified teacher, a certified special education teacher, or some type of certified instructional assistant. For these reasons, Issue 1(c) is insufficient as presently worded.

In Issue 2, Student states that Hemet refuses to meet for an IEP meeting at a time that works for his parent. This issue is direct, to the point, and provides enough information for Hemet to be able to address it at a resolution session or mediation, or to defend against the issue at a due process hearing. Issue 2 is sufficiently stated.

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.⁸ Student’s parent is encouraged to contact OAH for assistance if Student intends to amend his complaint.

ORDER

1. Issue 2 of Student’s complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 1(a), 1(b), and 1(c) of Student’s complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
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’s parent wishes the assistance of a mediator in formulating the issues of the amended complaint, she should immediately contact OAH.

8 Ed. Code, § 56505.

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

6. If Student fails to file a timely amended complaint, the hearing shall proceed only as to Issue 2 of Student's complaint.

DATE: January 14, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings