

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060028

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT; ORDER DENYING
MOTION TO DISMISS WITHOUT
PREJUDICE

On May 13, 2015, Student filed a Due Process Hearing Request¹ (complaint) naming the Oceanside Unified School District. On May 28, 2015, Oceanside Unified timely filed a Notice of Insufficiency (NOI) as to Student's complaint.²

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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

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 Oceanside Unified's Notice of Insufficiency is also termed a Motion to Dismiss. A notice of insufficiency is not the appropriate vehicle for filing a motion to dismiss. If Oceanside Unified believes it has appropriate grounds to move to dismiss any or all of Student's complaint, it must file a separate motion stating those grounds. The instant motion to dismiss is therefore denied without prejudice.

³ 20 U.S.C. § 1415(b) & (c).

of the problem to the extent known and available to the party at the time.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student’s complaint alleges one primary claim, with 17 sub-issues, some of which are sufficient and some which are insufficient. The following issues are sufficiently pled, because the body of Student’s complaint discusses the timing of the incidents and sufficient facts surrounding the incidents to put Oceanside Unified on notice of the issues and give it enough information to participate in a resolution and/ or mediation session, and to defend itself against the allegations at hearing if necessary:

Issue 1(A), which alleges that Oceanside Unified failed to fulfill its child find obligation by failing to assess Student prior to February 27, 2014;

Issue 1(C), which alleges that Oceanside Unified failed to have the school psychologist present at Student’s IEP meeting held on August 13, 2014 (mis-identified as August 8, 2014 in the statement of issues.) This issue is clearly stated. Whether Oceanside

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

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

Unified was required to have the school psychologist present is an issue to be decided at the hearing in this matter;

Issue 1(D), alleging a failure to timely complete the mental health assessment per the January 13, 2015 assessment plan;

Issue 1(E), alleging a failure to obtain the consent of Student's parent before administering an academic assessment to Student on March 4, 2015;

Issue 1(G), alleging a failure to secure the consent of Student's parent before implementing one-on-one aide support; and

Issues 1(K), (L), (M), (N), and (O), which allege a failure to appropriately address Student's academic, social skills, behavior, emotional and mental health needs.

All of these issues are supported by sufficient facts, even if in some cases briefly stated, to identify the nature of the problems presented.

However, Student has insufficiently pled the following claims:

In Issue 1(B), Student alleges that Oceanside Unified failed to provide his parent with a full and complete copy of his educational records. However, Student fails to state when the request or requests were made, what the requests were for, if any records were provided, and, if any were provided, what records remain to be produced.

In Issue 1(F), Student alleges that Oceanside Unified failed to provide his parents with regular progress reports on his as required. However, Student fails to state whether this was a requirement of one of his IEP's, and, if so, which IEP required the reports. Student also fails to state what type of progress reports were required.

In Issue 1(H), Student alleges that Oceanside Unified failed to implement his Behavior Intervention Plan. However, Student fails to state what the plan required and which parts of it were not implemented.

In Issue 1(I), Student alleges that Oceanside Unified failed to hold his annual IEP team meeting in a timely fashion. Student fails to state when the meeting should have been held, and why the meetings held from January through April 2015 failed to meet the requirement of a timely annual meeting.

In Issue 1(J), Student alleges that Oceanside Unified failed to implement the accommodations and supports required by his March 5, 2015 IEP. Student fails, however, to identify which accommodations and supports were not implemented.

In Issue 1(P), Student alleges a failure to properly address his assistive technology needs. However, Student fails to state what technology needs he had, and what type of

assistive technology Oceanside Unified should have provided to him, or why he required assistive technology in order to access his education.

In Issue 1(Q), Student alleges that Oceanside Unified failed to provide him with an education in the least restrictive environment. However, Student fails to state why the program Oceanside Unified offered was not in the least restrictive environment and fails to state what he believes his least restrictive environment to be, if other than that provided in his IEP's.

For these reasons, Student's Issues 1(B), (F), (H), (I), (J), (P), and (Q) are insufficient as presently pled.

ORDER

1. Issues 1(A), (C), (D), (E), (G), (K), (L), (M), (N), and (O) of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 1(B), (F), (H), (I), (J), (P), and (Q) 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 fails to file a timely amended complaint, the hearing shall proceed only on Issues 1(A), (C), (D), (E), (G), (K), (L), (M), (N), and (O) of Student's complaint.

6. Oceanside Unified's Motion to Dismiss is denied without prejudice.

DATE: June 1, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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