

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ABC UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015060902

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On June 8, 2015, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming ABC Unified School District.

On June 19, 2015, District filed a Notice of Insufficiency (NOI) as to Student's complaint. Student filed no opposition to the NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> 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.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> 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).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 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.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> 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.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s complaint identifies 25 “issues”, some of which are sufficient and some which are insufficient. District contends that many areas of the complaint are incomprehensible and District is unable to decipher Student’s specific grievances. District contends Student has failed to provide supporting facts for his claims sufficient for District to understand the basis of his claims. District describes Student’s complaint as “word frenzy” without direct relation to specific claims, rendering it insufficient. The complaint contains a series of incomplete thoughts and, with the exception of the April 30, 2015 IEP, no other IEPs are referenced in the complaint. District contends that without Student’s identification of the specific IEP(s) at issue, District is forced to deduce the IEP(s) at issue.

The issues are discussed below.

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<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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).

### Sufficient Issues

In Issue 5.1.3, Student alleges District failed to offer appropriate speech and language services for the 2014-2015, ESY, and the 2015-2016 school years. Student's complaint alleges Student has a history of speech and language delays, including a lack of vocabulary and deficits language processing and pragmatics. Student contends District should have offered increased speech and language services to address his needs, specifically, one 2-hour individual session per week and one 2-hour group session per week for the 2014-2015, ESY, and the 2015-2016 school years. Student's claim regarding ESY is interpreted to mean ESY for the 2014-2015 school year only, and if Student meant to include ESY for any other time period, he can move to amend to include that claim. Issue 5.1.3, alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 5.1.4, Student alleges District failed to offer an appropriate summer school academic program which caused a deprivation of educational benefits for the 2014- 2015, ESY and 2015-2016 school years. The only IEP identified in the complaint as being at issue was the one held on April 30, 2015. Student's claim for ESY is interpreted to include only ESY for the 2014-2015 school year only, and if Student meant to include ESY for any other time period, he can move to amend. Issue 5.1.4, alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 5.1.5, Student alleges District failed to offer Student a FAPE by failing to offer Student physical therapy for one hour, twice per week during the 2014-2015, ESY, and the 2015-2016 school years. Student contends that he fractured his arm and requires physical therapy to develop his hand, arm, muscle and upper body strength before he can fully participate in his adapted physical education program and achieve his fitness goal. Student's claim regarding ESY is interpreted to mean ESY for the 2014-2015 school year only, and if Student meant to include ESY for any other time period, he can move to amend to include that claim. Issue 5.1.5, alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 5.1.14, Student contends District failed to offer an appropriate IEP document at April 30, 2015 IEP which prevented parents from fully participating. Student alleges that the IEP failed to set forth the percentage of time Student was with typical peers, progress was not reported and District improperly responded in a box meant for Parent. Issue 5.1.14 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 5.1.16, Student alleges District failed to offer Student an appropriate functional behavior assessment for 2014-2015, ESY and 2015-2016 school years. Student alleges his behavioral functioning required an assessment in this area. Student's claim for

ESY is interpreted to include only ESY for the 2014-2015 school year only, and if Student meant to include ESY for any other time period, he can move to amend. Issue 5.1.16 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

In Issue 5.1.21, Student alleges that District denied him a FAPE for the 2014-2015, ESY, and the 2015-2016 school years by failing to offer appropriate assistive technology in the form of a laptop or memory book and appropriate software programs in the area of reading, writing and math, to aid Student in communication and comprehension. Student alleges he has memory recall deficits, a lack of organizational skills, comprehension and communication deficits, and that assistive technology is required in order to assist him with some of these deficits. Student's claim for ESY is interpreted to include only ESY for the 2014-2015 school year only, and if Student meant to include ESY for any other time period, he can move to amend. Issue 5.1.21 alleges sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and a hearing.

### *Insufficient Issues*

In Issue 5.1.1, Student alleges District denied Student a FAPE by failing to offer appropriate support for language and memory intervention through a Lindamood Bell program. The complaint states District refused a Lindamood Bell program requested by Parent and other IEP team members. The only IEP identified in the complaint as being at issue was the one held on April 30, 2015. Student's complaint is confusing. Student identifies the issue as District's failure to offer Lindamood Bell services during the 2013-2014 and 2014-2015 school years, but inconsistently claims on the next line that the time periods in question are the 2014-2015 and 2015-2016 school years, and ESY. However, the complaint appears to lack specific facts for anything other than the April 30, 2015 IEP. Further, Student fails to specifically identify the ESY at issue, or the date of the requests for Lindamood Bell so it is unclear for which year or to which IEP(s) these allegations pertain. Student does not relate the alleged facts to this specific claim for each of the specific years referenced. For clarity, for this issue, Student should separately identify which IEP(s) failed to offer appropriate support for language and memory intervention and the facts supporting the claim that at the time of the IEP(s) identified, such services should have been offered. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.2, Student alleges that District denied Student a FAPE by failing to offer an appropriate assessment plan for the 2013-2014, ESY, 2014-2015 and 2015-2016 school years which offered assessments in all areas of suspected disability. Student complaint contains numerous allegations that District failed to timely assess or appropriately assess Student and that District should have conducted more frequent assessments. The complaint refers to assessments in several areas. However, it is unclear from Student complaint's which assessments Student contends were never conducted but should have been conducted, when they should have been conducted and why; which assessments were untimely and how they were untimely; and which assessments were completed, but should have been conducted

more frequently, when Student contends such reassessments should have occurred, and the facts supporting that claim. Further, Student does not identify the date of the assessment plan(s) at issue and what specifically was inappropriate or deficient about the assessment plan(s) or the ESY at issue. Student should separately identify the assessment(s) or assessment plan(s) at issue, including the relevant date(s), and for each, state the problem with the assessment(s) or assessment plan(s) and the facts relating to that problem. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.6, Student contends District denied Student a FAPE by failing to provide Student with appropriate occupational therapy services for the 2014-2015, ESY, and the 2015-2016 school years, specifically, weekly one-on-one one-hour sessions with trained and experienced therapists. Here, Student's complaint does not appear to state any facts relating to Student's occupational therapy claim for each of the time periods in question and Student fails to specify the ESY period at issue. Various facts are set forth in the complaint, but Student does not relate those facts to this specific claim. Student should identify which IEP(s) failed to offer appropriate support for occupational therapy, and for each IEP identified, the facts supporting the claim, that such services should have been offered. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.7, Student contends District failed to offer an appropriate assessment by a licensed audiologist. Student's asserts that the District's assessment of Student was not adequate; however, Student fails to state the facts supporting Student's right to such an assessment, the date(s) that right accrued, or the IEP(s) at issue. Student does not explain how auditory processing is an area of need, such that Student requires an assessment by an audiologist, when exactly District was required to offer such assessment and the facts relating to that claim. The complaint contains a fragment of a sentence referring to "evidence of significant delays" but fails to specify the "evidence" or the date such "evidence" was obtained. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.8, Student contends District failed to offer an appropriate ABA trained one-to-one school aide. Student's complaint is confusing and does not identify the IEP(s) or time periods in question sufficiently for District to understand Student's claim. For clarity, Student should separately identify which IEP(s) failed to offer an aide and the facts supporting the claim for each IEP. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.9, Student contends District failed to offer adaptive physical education therapy. Student's complaint is confusing and does not identify the IEP(s) or time periods in question sufficiently for District to understand Student's claim. For clarity, Student should separately identify which IEP(s) failed to offer such service and the facts supporting the claim for each IEP. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.10, Student contends District failed to offer appropriate adaptive living skills, and a health and fitness program. Student claims District referred to him as obese and blamed his parents for his weight condition, and there is an incomprehensible reference to BMI calculations. However, Student's complaint does not appear to contain facts which support the claim that District was required to offer adaptive living skills and a health and fitness program in order to receive a FAPE. Student's complaint alleges various facts, but Student does not relate those facts to this specific claim. Nor does Student properly identify the time period or IEP(s) in question or set forth the facts supporting the claim for that time period or IEP. Student should identify which IEP(s) by date failed to offer such services, and for each IEP identified, the facts supporting the claim that such services should have been offered. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.11, Student claims that District denied him a FAPE by failing to appropriately assess Student in the area of assistive technology. Student's asserts that he needs an IPAD or memory notebook to assist him with recall, organization and increase his independence. However, Student fails to state how District's assessments were inappropriate and when District conducted the assessments he contends were inappropriate. Student's complaint alleges various facts, but Student does not relate those facts to this specific claim. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.12, Student claims that District denied Student a FAPE by failing to identify and develop appropriate goals in all areas of need. Student claims that appropriate vocabulary goals were not developed. However, Student does not specify the IEP(s) in question. In Issue 5.1.19, Student claims that District denied him a FAPE for the 2014-2015, ESY, and the 2015-2016 school years by failing to develop appropriate goals reasonably calculated to make adequate progress. Issues 5.1.12 and 5.1.19 are redundant and confusing. Aside from the one goal in vocabulary referenced in 5.1.12, Student fails to specify which other goals, if any, form the basis of Student's stated issue in 5.1.19. Student's complaint alleges various facts, but Student does not relate those facts to this specific claim and each IEP in question, and Student fails to specify the ESY period at issue. For clarity of issues, Student should identify by IEP(s), the goals which Student claims were not developed or inappropriate and how that denied Student a FAPE. Student has failed to state sufficient facts supporting either of these claims, and the claims are insufficient.

In Issue 5.1.13, Student contends District failed to offer a FAPE to Student at the April 30, 2015 IEP. Student's complaint alleges various facts, but Student does specify whether the facts relate to the April 30, 2015 IEP or to another unspecified IEP during the 2013-2014, 2014-2015 school years which Student has put at issue. To the extent that Student's other issues (5.1.1 through 5.1.25) relate to the April 30, 2015 IEP, Issue 5.1.13 is redundant of Student's other issues, and insufficiently specific as to the nature of the problem which Student is attempting to address by Issue 5.1.13. Further, many of the "allegations" in the complaint are incomplete sentences, rendering the complaint confusing and insufficient to properly notify the District of the specific issues for hearing and the factual basis of those issues. For clarity, Student should identify each alleged defect with the April 30, 2015 IEP,

and for each deficiency identified, the facts relating to that particular problem. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.15, Student claims that District denied him a FAPE for the 2014-2015, ESY, and the 2015-2016 school years by failing to offer an appropriate parent training in the form of two parent conferences per year on students with autism and related disorders. Here, Student's complaint does not appear to state any facts relating to this claim for each of the time periods in question, and Student fails to specify the ESY period at issue. Various facts are set forth in the complaint, but Student does not relate those facts to this specific claim. Student does not allege specifically when such training should have been offered or why such training was necessary in order for Student to receive a FAPE. Student also fails to specify the ESY period at issue. Nor does Student properly identify the IEP(s) in question or set forth the facts supporting the claim for the relevant time period covered by the IEP. Student should identify which IEP(s) by date failed to offer such services, and for each IEP identified, the facts supporting the claim that such services should have been offered. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.17, Student alleges that District denied Student a FAPE for the 2014-2015, ESY, and the 2015-2016 school years by failing to offer to an educationally related mental health services assessment to determine the extent Student's behaviors were affected by his mental health. Student's complaint fails to set forth facts indicating that mental health issues could be impacting Student's education. Student fails to relate his factual allegations to this specific claim, provides no allegations as to when and why District should have offered this assessment, and Student fails to specify the ESY period at issue. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.18, Student alleges that District denied Student a FAPE for the 2014-2015, ESY, and the 2015-2016 school years by failing to appropriately assess Student in the area of occupational therapy. Here, Student's complaint fails to set forth the specific facts relating to Student's occupational therapy claim. Student's complaint alleges various facts, but Student does not relate those facts to this specific claim or the time periods in question and Student fails to specify the ESY period at issue. Student fails to how District's assessments were inappropriate and when District conducted the assessments he contends were inappropriate. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.20, Student alleges that District failed to offer an appropriate ABA home program services for the 2014-2015, ESY, and the 2015-2016 school years by failing to offer such program for 20 hours per week, with 8 hours of supervision per month, and 2 hours of clinic meetings monthly. Student's complaint alleges various facts, but Student does not relate those facts to this specific claim or the time periods in question and Student fails to specify the ESY period at issue. Student fails to set forth any facts supporting this claim. Nor does Student properly identify the IEP(s) in question. Student should identify which IEP(s) by date failed to offer such services, and for each IEP identified, the facts supporting

the claim that such services should have been offered. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.22, Student alleges that District denied him a FAPE for the 2013-2014, ESY, 2014-2015, and the 2015-2016 school years by failing to offer him appropriate vision therapy. Student states that District conducted vision screenings which Student passed. Student sets forth no facts regarding vision being an area of need such that he required vision therapy. Student's complaint alleges various other facts, but Student does not relate those facts to this specific claim. Student fails to specify the ESY period at issue. Nor does Student properly identify the IEP(s) in question or set forth the facts supporting the claim for the relevant time period covered by that IEP. Student should identify which IEP(s) by date failed to vision therapy, and for each IEP identified, the facts supporting the claim that such services should have been offered. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.23, Student contends District denied Student a FAPE by failing to offer Student with auditory integration training therapy for the 2014-2015, ESY, and the 2015-2016 school years. Here, Student's complaint fails to state any facts relating to auditory integration training. Student's complaint alleges various facts, but Student does not relate those facts to this specific claim or the time periods in question and Student fails to specify the ESY period or IEP(s) at issue. Student should identify which IEP(s), by date, failed to offer auditory integration training therapy, and for each IEP identified, the facts supporting the claim that such services should have been offered. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.24, Student alleges District denied him a FAPE for 2014-2015, ESY, and the 2015-2016 school years by failing to provide him an opportunity for an educational benefit because all of his needs were not appropriately assessed, contributing to inaccurate present levels of performance and deficient goal development. The broad nature of this issue makes it redundant of Student's other issues, and insufficiently specific as to the nature of the problem which Student is attempting to address by Issue 5.1.24. If Student is attempting to raise an issue for hearing which is not addressed by his other issues (5.1.1 through 5.1.23 and 5.1.25), Student should separately enumerate the specific assessment(s), goal(s), or present level of performance(s) or other concern(s) at issue by date(s), or IEP(s) and, for each concern, the specific facts relating to that particular problem. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

In Issue 5.1.25, Student alleges District failed to offer Student individual tutoring after school by experienced staff for the 2014-2015, ESY, and 2015-2016 school years. Student's complaint alleges various facts, but Student does not relate those facts to this specific claim or the time periods in question and Student fails to specify the ESY period or IEP(s) at issue. Student fails to state the type of tutoring which should have been offered. Student should identify which IEP(s) by date failed to offer such services, and for each IEP identified, the facts supporting the claim that such services should have been offered. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.



District argues that Student's complaint has other headings after Issue 5.1.25 without explanation, including a reference to its failure to assess in the 2015-2016 school year and "Academically Providing False Grades," which make it unclear whether Student is intending to raise issues for hearing other than those listed in 5.1.1 through 5.1.25. District claims there are no facts stated for these allegations and that it never conducted assessments in the 2015-2016 which has yet to begin. Here, Student's complaint is confusing. It is unclear if Student is raising new issues after Issue 5.1.25, what the issues are, and facts supporting those issues. Again, if Student is attempting to raise an issue for hearing not addressed by his other issues (5.1.1 through 5.1.25), Student should separately enumerate the concern(s) at issue by date(s), or IEP(s) and, for each concern, the specific facts relating to that particular problem. Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

#### ORDER

1. Issues 5.1.3, 5.1.4, 5.1.5, 5.1.14, 5.1.16 and 5.1.21 of Student's complaint as limited by this Order are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 5.1.1, 5.1.2, 5.1.6, 5.1.7, 5.1.8, 5.1.9, 5.1.10, 5.1.11, 5.1.12, 5.1.13, 5.1.15, 5.1.17, 5.1.18, 5.1.19, 5.1.20, 5.1.22, 5.1.23, 5.1.24, 5.1.25 and the issues listed after 5.1.25 and prior to the "Applicable Law," 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).<sup>8</sup>

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 5.1.3, 5.1.4, 5.1.5, 5.1.14, 5.1.16 and 5.1.21 of Student's complaint.

6. All dates previously set are confirmed.

DATE: June 29, 2015

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<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

/s/

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LAURIE GORSLINE  
Administrative Law Judge  
Office of Administrative Hearings