

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. 2015040133

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 23, 2015 Parent on behalf of Student filed a Due Process Hearing Request]¹ (complaint) naming Hemet Unified School District. That complaint was supplanted by an Amended Due Process Hearing Request filed on June 29, 2015.

On July 8, 2015, District 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 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 four issues: denial of a free and appropriate public education by failure to assess in all areas of suspected disability; denial of a free and appropriate public education by failing to tailor an appropriate educational program to Student’s needs; failure to provide prior written notice of denial of eligibility; and failure to provide Student with copies of his educational records.

Student’s complaint depicts him as suffering from a rapidly worsening clinical depression and reports the impact of that condition upon his academic performance and behavior. Student contends that he had a mental condition or emotional disability that qualified him for special education services which was not properly acted upon by District.

As to issue one, Student contends that District failed provide assessments related to his areas of suspected disability. Specifically, Student asserts that he should have been given a mental health assessment, a nurse’s assessment, and a behavioral assessment. This issue is sufficiently pled. District’s objection to the sufficiency of Student’s complaint appears to be

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).

an assertion of the propriety of the assessments that were actually performed. Such factual disputes may not be raised in a notice of insufficiency.

Regarding issue two, Student asserts that he was denied a free and appropriate public education because District did not design an educational program that met his needs. He contends that the accommodations offered him through the section 504 and positive behavioral intervention plans were inadequate and sets out further appropriate accommodations. Therefore, issue two is sufficiently pled.

As to issue three, Student contends that District committed a procedural violation by failing to provide him with proper prior written notice and information about his rights of appeal before denying his eligibility for special education. Accordingly, issue three is sufficiently pled.

Finally, issue four charges that District committed a procedural violation by failing to provide Parent with the educational records she requested by letter of May 4, 2015, and that the violation resulted in a denial of a free and appropriate public education to Student because it impeded Parent's ability to participate in the decision-making process regarding Student's education. Issue four is sufficiently pled.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate a resolution session and mediation. Therefore, Student's statement of the four claims is sufficient.

Student's proposed resolutions include requests for independent educational evaluations in psychoeducational functioning, behavior, educationally related mental health, neuropsychological functioning, speech and language, and functional analysis, in addition to a nurse's assessment. In addition, Student seeks compensatory education, a one-to-one aide, and an appropriate educational placement. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard of stating resolutions to the extent known and available to him.

Therefore, Student's complaint is sufficiently pled.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: July 10, 2015

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings