

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

JEFFERSON UNION HIGH SCHOOL
DISTRICT

OAH Case No. 2015070570

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 29, 2015, Student filed a Due Process Hearing Request¹ (complaint) naming Jefferson Union High School District.

On July 15, 2015, District filed a Notice of Insufficiency 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁴

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 On July 15, 2015, Student filed an Amended Due Process Hearing Request in response to District's NOI, which will be addressed in a separate order.

³ 20 U.S.C. § 1415(b) & (c).

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

Student’s complaint was filed with OAH on June 29, 2015. District asserted in its NOI that it received Student’s complaint on July 1, 2015, but this assertion was not supported by a declaration signed under penalty of perjury. In contrast, the complaint included a proof of service, signed by Sonia Melgoza, declaring that on June 27, 2015, Student served the complaint via facsimile upon Sherry Segales, Director of Special Education, Jefferson Union High School District. The fax number identified in the proof of service is identical to the fax number listed on District’s web site and on file with OAH. District’s NOI was dated and filed with OAH on July 15, 2015, which is more than 15 days

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).

after it received Student's complaint. District's NOI was not filed within the statutorily required timeline. Therefore, Student's complaint is deemed sufficient.

Regardless of the timeliness of the NOI, 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 in a resolution session and mediation. However, Student's complaint does not enumerate issues. Therefore, for purposes of analyzing the sufficiency of the complaint, the issues have been enumerated as follows.

As to Issue 1, Student's complaint alleges that the initial IEP, dated September 13, 2013, failed to offer her a FAPE, because District offered an inappropriate placement. Student alleges that on September 13, 2013, District determined that Student was eligible for special education services due to an Emotional Disturbance but only offered Student one period per day of tutorial. Student alleges that she engaged in "continuous school refusal" behaviors and required a "residential-therapeutic educational placement" to benefit from her education. This allegation is sufficiently pled to put District on notice as to the basis of Student's claim.

As to Issue 2, Student's complaint alleges that the IEP team reconvened on March 14, 2014, and District offered "counseling sessions of 100 minutes per month for Student and 100 minutes per month for parents." The complaint alleges that Student did not benefit from this service, because she continued to engage in school refusal behaviors and needed a residential-therapeutic educational placement to benefit from her education. This allegation is sufficiently pled to put District on notice as to the basis of Student's claim.

As to Issue 3, Student's complaint alleges that the IEP team reconvened on May 16, 2014, and District offered extended school year services for the summer, consisting of only mental health services. Student alleges that District did not offer any academic instruction "despite the fact that [Student] had failed many of her classes and continued to engage in school refusal." The complaint alleges that the offer for extended school year was not appropriate, because Student continued to engage in school refusal behaviors and needed a residential-therapeutic educational placement to benefit from her education. This allegation is sufficiently pled to put District on notice as to the basis of Student's claim.

As to Issue 4, Student's complaint alleges that on February 4, 2015, District offered a new placement without convening an IEP team meeting. The complaint alleges that District offered a special day class at a therapeutic day school on a segregated facility for a shortened school day. Student alleges that the length of Student's school day was shorter than the length of the school day for students without disabilities. The complaint alleges that Student continued to engage in school refusal behaviors and needed a residential-therapeutic educational placement to benefit from her education. This allegation is sufficiently pled to put District on notice as to the basis of Student's claim.

Student's proposed resolutions are that District place student in a residential-therapeutic high school, that District provide Student with unspecified compensatory educational services for the denial of a FAPE since September 13, 2013, and that District reimburse Student's parents for an unspecified amount for private educational expenses. 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).) The proposed resolutions stated in Student's complaint as to compensatory education and reimbursements are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. The mediation, prehearing conference and due process hearing shall proceed as currently scheduled.

DATE: July 20, 2015

/s/
CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings