

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CARLSBAD UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2018080579

ORDER DETERMINING COMPLAINT
INSUFFICIENT

On August 14, 2018, Parent on behalf of Student filed a due process hearing request¹ (complaint) with the Office of Administrative Hearings naming Carlsbad Unified School District. On August 21, 2018, Carlsbad timely 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. (20 U.S.C. § 1415(b) & (c).) 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. (20 U.S.C.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

² Student did not serve Carlsbad with his complaint. Carlsbad received a copy after requesting one from OAH. Parent has already been warned in a prior action between the parties as to his obligation to serve Carlsbad (OAH Case No. 2016050271), and is put on notice that email service of Carlsbad or its attorney is not proper service unless they consent to email service pursuant to Title 5, California Code of Regulations, section 3083, subdivisions (b) and (c).

§ 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student’s complaint raises five issues, which he states cover the period from August 2016 to August 2018. In issue one Student contends that he did not receive a functional behavior assessment per the Individuals with Disabilities Education Act. Student fails to give any facts or include any discussion explaining why Carlsbad should have conducted the assessment. In issue two, Student contends that he was not assessed, but fails to state what type of assessment or assessments Carlsbad should have done and why the assessments were necessary. In issue three, Student states he had an inappropriate placement. He fails to state what placement he did have, why it was not appropriate, what his placement should have been, and why a different placement was necessary for him to receive a free appropriate public education. In issue four, Student merely states “FERPA³ noncompliance.” Student fails to state how Carlsbad failed to comply with that statute and how the alleged non-compliance denied Student a FAPE. Student’s issue five merely states “Suicide Counseling.” The issue fails to state anything else.

Student’s complaint is devoid of a single factual description to support the five issues alleged. Student’s complaint states that he would be providing a description of the issues and resolutions under separate cover. First, a complaint must be complete in and of itself. A

³ FERPA is the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g; 34 C.F.R. § 99.)

party is not permitted to file pleadings in separate parts. In any case, Student did not file any other pleading in this case that added any description of facts to his complaint. For these reasons, the complaint is insufficient in its entirety as it fails to include the required notice of a description of the problems and the facts relating to them.⁴

A complaint is also 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 failed to include any proposed resolutions in his complaint, which is another basis for finding the complaint insufficient as pleaded.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parent is encouraged to contact OAH for assistance if Parent intends to amend the due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁵
3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

⁴ In his complaint, Student also contends that he inadvertently requested that OAH close case number 2018060509, a case he previously filed, instead of asking for a continuance of the case. Student requests that OAH note the error and allow correction of the error and continue the previous matter. Student must file a separate request to re-open case number 2018060509, if that is what he is attempting to do.

⁵ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. All dates previously set in this matter are vacated.

DATE: August 23, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings