

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080236

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE
PROCESS COMPLAINT

AUGUST 17, 2021

On August 5, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Diego Unified School District. On August 16, 2021, San Diego filed a Notice of Insufficiency as to the complaint.

San Diego contends that Student's complaint does not identify cognizable issues for hearing within OAH's jurisdiction. San Diego also claims the proposed resolutions are not sufficiently clear and do not help to identify proper issues for hearing.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution to the extent known and available to the party at the time. (20 U.S.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 alleges three insufficiently pled claims.

Student's Problem Number 1 states that Parent had concerns since January 2021. It alleges that on July 15, 2021, Parent learned that Ms. Garcia failed to give Student's teachers their individualized educational program, referred to as IEP. Student contends that Ms. Garcia's alleged omission prevented them from attending summer school in June 2021. Student also alleges they did not attend summer school because San Diego failed to notify them on which campus summer classes were being held. It is not clear in Problem Number 1 how the alleged failures resulted in a change of Student's identification, evaluation, or educational placement, or providing Student a free appropriate education, called FAPE. Problem number 1 is insufficiently pled

Problem Number 2 alleges that Mrs. Garcia and her staff proposed that Student attend "8th grade and 7th grade at the same time". Parent objected to this proposal based upon Student's "disability and mental health." Student contends that San Diego proposed a program that included Student's elective to be "study hall for 7th grade catch up." Student also states that San Diego has "rules and policies for retention" and those policies are not being followed. The complaint does not clearly state how San Diego's alleged conduct relates to Student's identification, evaluation, or educational placement, or providing Student a FAPE. Accordingly, Student's Problem Number 2 is insufficiently pled.

Problem Number 3 contends that Parent voiced their concern in January 2021 that Student was failing classes. Parent wanted to speak with teachers regarding

Student's "depleting" test scores and behavior. Student alleges that San Diego is "wanting to take away" their elective Spanish class. Student claims that San Diego failed to consider the opinion of their health care providers "regarding this situation". Student also alleges they were not provided accommodations during the 7th grade school year because Mrs. Garcia failed to provide teachers with their IEP. It is not clear how these facts relate to a proposed change regarding Student's identification, evaluation, or educational placement, or providing Student a FAPE. Student's Problem Number 3 is insufficiently pled.

Student's complaint fails to provide San Diego with the required problem description and the facts relating to the problem. Accordingly, it is unclear if any issues resulted in a change regarding Student's identification, evaluation, or educational placement, or providing Student a FAPE.

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 resolution stated in Student's complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to them at the time.

A parent without 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.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code section 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).
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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings