

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090172

ORDER OF DETERMINATION OF PARTIAL INSUFFICIENCY
OF DUE PROCESS COMPLAINT

SEPTEMBER 23, 2021

On September 6, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Los Angeles Unified School District. On September 21, 2021, Los Angeles Unified filed a Notice of Insufficiency as to the complaint.

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 defines three claims with several subparts, alleging Los Angeles Unified denied Student a free appropriate public education, referred to as a FAPE, during the 2019-2020 school year through the 2021-2022 school year. Other than a page of fact allegations of background information, and repetitive pages of the same, very detailed proposed resolutions for each of the three claims, the remaining pages of the complaint asserting claims appears to be a template pleading filled with generalities and vague allegations, devoid of facts related to how Los Angeles Unified denied Student a FAPE. It is impossible to identify what deficiencies Student alleges throughout the time period at issue. Student does not identify any individualized education programs, called an IEP, apart from the April 5, 2018 IEP at which Student was found eligible for special education and related services. The April 5, 2018 IEP is not in dispute in this case filed more than two years later, on September 6, 2021. Student's complaint does not specify which of his IEPs since September 2019 are challenged by his complaint.

Student's complaint alleges several claims in the complaint, with numerous subparts, some of which are sufficient and some which are insufficient. The issues are discussed below.

Despite Student's failure to identify specific IEPs in dispute, in what Student numbered Issues 1(d)(1), (2), (3), (4), and (5), 2(d)(1), (2), (3), (4), and (5), and 3(d)(1), (2), (3), (4), (5), and (6), Student has sufficiently stated the following issues:

Did Los Angeles Unified deny Student a FAPE since the date of any IEP developed on or after September 6, 2019, by:

1. Failing to offer Student appropriate placement, including grade level during the 2021-2022 school year; and
2. Failing to offer Student appropriate related services, specifically:
 - a. Speech and language therapy;
 - b. Occupational therapy;
 - c. Social skills development services; and
 - d. Behavior supports and services including a full-time one-to-one behavior aide with eight hours per month of behavior supervision service?

All of Student's other claims are insufficiently pleaded. Student alleges Los Angeles Unified failed to appropriately and timely assess Student in all areas of suspected disability. The complaint does not identify any areas of suspected disability Los Angeles failed to assess, or what assessments Los Angeles Unified conducted, when, and how they were either deficient or untimely. Student's complaint is too vague because it does not identify specific assessments conducted or not conducted, or specific areas of suspected disability assessed or not assessed, and does not identify any perceived deficiencies in the unspecified assessments Los Angeles Unified actually did conduct and with which Student takes issue. Student's complaint does not provide Los Angeles Unified with sufficient information needed to prepare for hearing. For these reasons, Issues 1(a), 2(a), and 3(a), and the part of what Student identified as Issues 1(e), 2(e), and 3(e) regarding assessments, are insufficiently pleaded.

Student alleges Los Angeles Unified failed to properly identify and address the full range of Student's needs. The complaint does not state what needs Student is referring to or what Student's IEPs developed on or after September 6, 2019, missed in addressing them. Student's complaint is too vague to provide Los Angeles Unified with

sufficient information needed to prepare for hearing. For these reasons, Issues 1(b), 2(b), and 3(b) are insufficiently pleaded.

Student alleges Los Angeles Unified failed to include “appropriate [present levels of performance] and measurable annual goals” in his IEPs. The complaint does not state what areas of need Student contends were “inappropriately” noted, nor which goals Student contends were not measurable. Student does not even allege that he claims all goals in the unidentified IEPs were unmeasurable. Student’s complaint is too vague to provide Los Angeles Unified with sufficient information needed to prepare for hearing. For these reasons, Issues 1(c), 2(c), and 3(c) are insufficiently pleaded.

Student alleges Los Angeles Unified failed to develop appropriate goals to address all areas of need. The complaint does not identify which goals in which IEPs Student contends were not appropriate, and the complaint does not identify which areas of need were not addressed by any of the goals in any particular IEP. Student’s complaint is too vague and does not provide Los Angeles Unified with sufficient information needed to prepare for hearing. For these reasons, Issues 1(d)(6), 2(d)(6), and 3(d)(7) are insufficiently pleaded.

Student alleges Los Angeles Unified failed to offer appropriate accommodations to address all areas of need. The complaint does not identify which accommodations in which IEPs Student contends were not appropriate, and the complaint does not identify what accommodations Student required to receive a FAPE but Los Angeles Unified failed to include in any of the IEPs developed during the statutory time period. Student’s complaint is too vague and does not provide Los Angeles Unified with sufficient information needed to prepare for hearing. For these reasons, Issues 1(d)(7), 2(d)(7), and 3(d)(8) are insufficiently pleaded.

Student alleges Los Angeles Unified failed to offer Student appropriate extended school year services for the summers of 2020, 2021 and 2022. The complaint does not identify what Student asserts was deficient about the extended school year services Los Angeles Unified offered, or whether Los Angeles Unified offered any extended school year at all. While Los Angeles Unified certainly knows whether any IEPs created on or after September 6, 2019, did or did not include an offer of extended school year, Student's complaint is too vague and does not provide Los Angeles Unified with sufficient information needed to prepare for hearing if the dispute concerns any extended school year program(s) Los Angeles Unified actually offered. For these reasons, Issues 1(d)(8), 2(d)(8), and 3(d)(9) are insufficiently pleaded.

Student alleges Los Angeles Unified failed to comply with various procedural requirements of the Individuals with Disabilities Education Act "including but not limited to" allowing Parent's meaningful participation at Student's IEP meetings, not predetermining the IEPs, considering a continuum of options for Student, and making a "'formal, specific'" offer of placement and services. Even as to the procedural violations Student asserts, the complaint fails to allege when the acts or omissions that gave rise to the procedural violations, or in what way any of the conclusory procedural violations occurred. Therefore, the complaint is too vague and does not provide Los Angeles Unified with sufficient information needed to prepare for hearing. For these reasons, Issues 1(e), 2(e), and 3(e) are insufficiently pleaded.

ORDER

1. Issues 1(d)(1), (2), (3), (4), and (5), 2(d)(1), (2), (3), (4), and (5), and 3(d)(1), (2), (3), (4), (5), and (6) of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. All other issues of Student's complaint are insufficiently pleaded 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).
4. 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.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1(d)(1), (2), (3), (4), and (5), 2(d)(1), (2), (3), (4), and (5), and 3(d)(1), (2), (3), (4), (5), and (6) in Student's complaint.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings