

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021120223

ORDER DETERMINING PARTIAL SUFFICIENCY OF
DUE PROCESS COMPLAINT

DECEMBER 23, 2021

On December 7, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming William S. Hart Union High School District. On December 22, 2021, Hart Union 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.)

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).)

DISCUSSION

Student's complaint enumerates only one issue, which contains several claims, some of which are sufficient and some of which are insufficient. The claims are discussed below. Student asserts he challenges the individualized education program, called an IEP, dated December 13, 2019, and alleges there were IEP team meetings on that date "and through October 11, 2021." It is not clear what other IEPs Student claims were developed and were insufficient after December 13, 2019. But Hart Union convened and conducted those meetings and while OAH cannot know from the complaint the dates of other IEPs, Hart Union does. Therefore, Student's complaint alleges Hart Union denied Student a free appropriate education, called a FAPE, in all IEPs developed between December 13, 2019, and October 11, 2021, in the following ways:

1. Failing to assess Student, but without specifying what areas of suspected disability Hart Union failed to assess or what type of assessments Hart Union failed to conduct;
2. Failing to offer appropriate goals in the areas of :
 - a. Speech;
 - b. Language;
 - c. Communication;
 - d. Behavior;
 - e. Social functioning;
 - f. Reading;
 - g. Writing; and
 - h. Math;

3. Failing to offer appropriate placement by offering nonpublic school, which was not the least restrictive environment in which Student could receive a FAPE;
4. Failing to offer appropriate related services, specifically transportation of a reasonable time duration; and
5. Materially failing to implement Student's IEPs regarding:
 - a. Specialized academic instruction;
 - b. Speech/language services;
 - c. Individual counseling;
 - d. Parent counseling;
 - e. "and other services," which Student failed to identify.

Student's proposed resolution are reimbursement for educational expenses Parents incurred, including transportation, and unspecified compensatory education. Hart Union challenges the sufficiency of notice regarding Student's proposed resolution of reimbursement because Student did not specify what educational expenses Parents incurred, when, or how much money Student seeks.

For the first issue identified above, regarding failure to assess, Student has failed to state sufficient facts supporting this claim as Student does not list the areas of suspected disability that Hart Union failed to assess. Therefore, this claim is insufficient.

For the second issue identified above, regarding failing to offer appropriate goals in specific areas, the claim is sufficiently pleaded to put Hart Union on notice as to the basis of Student's claims and permit Hart Union to respond and participate in a resolution session and mediation, and prepare for hearing.

For the third issue identified above, regarding failing to offer appropriate placement in the least restrictive environment, the claim is sufficiently pleaded to put Hart Union on notice as to the basis of Student's claim and permit Hart Union to respond and participate in a resolution session and mediation, and prepare for hearing.

For the fourth issue identified above, regarding failing to offer appropriate related services, specifically transportation of a reasonable time duration, transportation is the only unsatisfactory related service Student identifies in the complaint. Student's broad assertion that Hart Union failed during the specified time period to offer him "adequate" "goals, services and placements" is insufficient to put Hart Union on notice of any denial of FAPE for failing to offer appropriate "services" in any respect other than concerning transportation of a reasonable time duration. Regarding transportation of a reasonable time duration, the claim is sufficiently pleaded to put Hart Union on notice as to the basis of Student's claims and permit Hart Union to respond and participate in a resolution session and mediation, and prepare for hearing. The complaint is insufficiently pleaded regarding a challenge to any other "service" or related service.

For the fifth issue identified above, regarding materially failing to implement Student's December 13, 2019 IEP and any other IEPs developed through October 11, 2021, the claim is sufficiently pleaded to put Hart Union on notice as to the basis of Student's claims and permit Hart Union to respond and participate in a resolution session and mediation, and prepare for hearing, but only regarding specialized academic instruction, speech/language services, individual counseling, and parent counseling. Student's assertion that Hart Union materially failed to implement Student's IEPs regarding "and other services" is insufficient to provide Hart Union the required notice of the basis of Student's complaint because it does not identify the additional service areas Student contends Hart Union materially failed to implement.

Student's proposed resolution of reimbursement is not stated with particularity regarding the types of educational expenses Parents incurred, the dates on which they were incurred, or the amount of reimbursement Student seeks, either by category of expense or in total amount. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues 2, 3, and 5.a.-5.d. are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 4 is sufficient as limited to the time duration of transportation, but Student failed to sufficiently plead regarding any other "services"/related services under title 20 United States Code section 1415(c)(2)(D).
3. Issues 1 and 5.e. are insufficiently pleaded under title 20 United States Code section 1415(c)(2)(D).
4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
5. 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.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 2, 3, 4 as to transportation only, and 5.a.-5.d, as articulated in this Order.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings