

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

NEW HAVEN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020540

ORDER FINDING DUE PROCESS COMPLAINT
INSUFFICIENT AND DEEMING MOTION TO DISMISS ISSUE
ONE MOOT

FEBRUARY 22, 2022

Parent on Student's behalf filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH on February 15, 2022. The complaint named New Haven Unified School District as respondent. On February 18, 2022, New Haven Unified timely filed a Notice of Insufficiency as to the complaint. New Haven concurrently filed a Motion to Dismiss as to Issue 1 of the complaint.

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, called FAPE; (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 Individuals with Disabilities Education Act, called 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 also required to include proposed resolutions to the problems alleged in the complaint, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).)

Student's complaint generally asserts that Student is twelve years old and in sixth grade. Student attends the "Decoto [School] of Independent Study." The school district of residence is New Haven Unified.

Student alleges in Issue 1 that Parents have not yet agreed to a proposed individualized education plan, called IEP, from New Haven Unified, offered in September 2021. Student claims that in February 2022 Parents requested additional time to respond to the IEP offer for personal reasons. Student also alleges that New Haven Unified notified Parents in February 2022 of due process rights to mediation and a hearing. Student alleges that "ADA laws" entitled Parents to postpone a decision on the September 2021 IEP where Student was not suffering physical or mental harm. Student also alleges Parents required more time under the "medical policies and laws" governed by "the California Disability Act" to respond to the September 2021 IEP offer.

Issue 1 does not identify with sufficient facts as to what Parents' objections to the September 2021 IEP were or otherwise state any facts supporting claims under the IDEA relating to the implementation of an IEP or offers of a FAPE within the proposed IEP. Claims under the Americans with Disabilities Act and related California disability statutes are outside of the jurisdiction of the OAH. For these reasons, Issue 1 is insufficient to allow New Haven Unified to respond to the complaint, participate in a resolution session or prepare for hearing. New Haven Unified's concurrently filed Motion to Dismiss Issue 1 is therefore deemed moot.

Issues 2 alleges that New Haven Unified required Student to attend classes in person because the school could not offer services to meet Student's needs through independent study. Student does not allege when New Haven Unified made this requirement or whether it was part of an IEP offer of a FAPE. Student alleges Parents requested tutoring and independent study, and New Haven responded it would offer tutoring to Student if Student attended school in person. Again, Student does not allege when this request was made, and whether the request was associated with an IEP meeting or IEP offer. Student also generally alleges New Haven staff did not properly engage with Student remotely or in person and New Haven Unified did not properly address staff improvements or engagement. Student alleges New Haven Unified did not consider Student's physical safety and mental health but does not state facts identifying when these claims occurred, or whether these claims are associated with a failure to make an IEP offer or implement an existing IEP.

Issue 2 does not state sufficient facts to support a claim under the IDEA that New Haven Unified denied Student a FAPE, to enable the school district to participate in a resolution session or prepare for hearing.

Issue 3 alleges that Student lost many school days due to the "PGE outages" and the "Corona Pandemic." Student alleges Student is "not ready for" "mature situations". Student alleges New Haven Unified teachers do not spend enough time with Student. Issue 3 also alleges general failures by the school district to communicate with parents and resolve complaints about teachers and staff. Issue 3 is not clearly pled with sufficient facts to identify a claim by Student under the IDEA that New Haven Unified can respond to the complaint, participate in a resolution session and prepare for hearing.

Student's proposed resolutions seek a "real document holding staff and special education services accountable." Student seeks better teacher engagement and parent involvement in the independent study program but does not identify a specific remedy for Student under the IDEA. Student generally seeks "testing outside of New Haven School District" but does not raise an issue that New Haven Unified did not appropriately conduct any specific assessment of Student. Student seeks direct teacher engagement, and better communication between the school district and Parents, including more resources for parents in general, but raises no claim under the IDEA that would support such a general remedy.

In summary, Issues 1, 2, and 3, and the proposed resolutions, do not state sufficient facts to provide New Haven Unified with the required problem description and the facts relating to a problem that arises under the IDEA, over which OAH has jurisdiction. The proposed resolutions seek general changes in the school district's relationship with parents but do not seek any specific remedies associated with any specific claim arising under the IDEA. Therefore, Student has failed to state sufficient facts supporting the complaint, which is deemed insufficient.

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 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).
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.
5. New Haven Unified's motion to dismiss Issue 1 is deemed moot.
6. All dates previously set in this matter are vacated.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings