

regulations implementing the Individuals with Disabilities Education Act (“IDEA”) impose specific requirements on due process complaints.

Procedural safeguards and state complaint procedures, including hearing rights, are set forth in 707 KAR 1:340. Section 11(1) requires a request for hearing to contain:

- (a) The name of the child;
- (b) The address of the residence of the child;
- (c) The name of the School the child is attending;
- (d) A description of the nature of the problem; and
- (e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

Federal law also requires the complaint to state a description of the nature of the problem, facts relating to the problem and a proposed resolution of the problem to the extent known and available to the party at the time. 34 CFR § 300.508(b)(5) and (6).

The requirements as to the due process complaint prevent vague complaints and promote fairness by providing the parties with sufficient information to remedy the problem and/or prepare for the resolution session, mediation or hearing. The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” 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 is not intended to reach the level of specificity and detail of a court pleading. Significantly, the hearing officer must make a determination on the face of the due process complaint whether it meets the statutory requirements of an IDEA complaint. 34 CFR § 300.508(d).

Issues on appeal are limited to the order being appealed, which found the Student’s complaint of February 21, 2020, insufficient on its face. The arguments the parties have made in their briefs to ECAB regarding the merits of potential claims that could have been made (but

were not articulated in the complaint) or disputes about factual matters that might be evidence in a hearing are not relevant nor can they, on appeal, cure a defective complaint. While the Student attached 75 pages of documents to the complaint as an exhibit, neither the hearing officer nor the School was required to pour through the exhibits to discover potential claims the Student might have. While exhibits may contain evidence to support a factual assertion in a complaint, the complaint itself must, on its face, articulate alleged violation(s) of IDEA.

34 CFR 300.507(a)(1) and (2) state a due process complaint may be filed on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or provisions of FAPE to the child)” and “must allege a violation.” Additionally, the complaint must provide:

a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and ... [a] proposed resolution of the problem to the extent known and available to the party at the time.

300.508(5). A sufficient complaint will enable the School to respond as required by

300.508(e)(1):

If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent’s due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

- (i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
- (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
- (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- (iv) A description of the other factors that are relevant to the agency’s proposed or refused action.

The complaint was dismissed by the hearing officer because it did not “contain enough information to provide Respondent with an awareness and understanding of the issues forming the basis of the complaint.” The hearing officer correctly stated, “The complaint contains vague allegations and includes references to fraud, cheating, harassment, a tort action and the Americans with Disabilities Act. There is no description of a problem involving Student’s access to FAPE and the allegations presented are not appropriate for an IDEA due process hearing.”

Below is a paragraph-by-paragraph analysis of the complaint.

1. Paragraphs 1-7 appear to be objections to exhibits submitted by the School in support of a motion to dismiss an earlier version of the complaint. Whether or not dates or information in such documents were erroneous, these paragraphs do not state an IDEA claim.

2. Paragraph 8 alleges, “The Petitioners believe that [REDACTED] has submitted documents that misrepresent the individuals that executed and signed the documents.” It is unclear whether this relates to arguments about the first complaint or something else. Identity of relevant persons could matter in an evidentiary hearing if relevant to prove or disprove a claim, but this paragraph does not allege a violation of IDEA.

3. Paragraph 9 alleges the Student requested but was not given additional time to finish a quiz. However, it is not alleged that this violated any provision of the Student’s IEP.

4. Paragraphs 10 and 11 allege a teacher accused the Student of cheating and publicized that allegation. This may or may not violate the School’s policy or the Student’s privacy rights, but it is not an issue within the jurisdiction of due process proceedings.

5. Paragraph 12 alleges errors in dates and page numbers of records but does not allege an IDEA violation.

6. Paragraph 13 alleges Student was “not provided the statutory requirement information relating to the Stay Put program.” ECAB guesses the Student means prior written notice of a proposed change in placement, but this is only a guess. The complaint does not identify the original placement, the facts Student claims constitute a change in placement, or when such change in placement allegedly took place. Neither the hearing officer nor the School is required to guess what the Student’s claims are, and the Student was given multiple chances to clarify the complaint.

7. Paragraph 14 concerns a behavioral incident that occurred after filing of the complaint for which the Student “was written up” that Student claims is retaliation against Student for filing a request for due process. The complaint gives no dates, names, or other facts, and neither affirms nor denies the Student misbehaved. But, if Student was wrongfully punished in retaliation for asserting a right, or is being discriminated against, claims for damages are not within the jurisdiction of a due process proceeding.

8. Paragraph 15 asserts an “Integrated Summary of Assessment” was performed without input from parents or Student. However, the complaint does not seek as relief a new Assessment or an order requiring an Independent Education Evaluation (“IEE”), or allege that an IEE was requested and denied. At most, it appears that the allegation contends the Assessment is not good evidence of whatever is contained therein, which might be relevant at a hearing if it were offered in evidence. However, after multiple opportunities to amend, this paragraph’s factual allegations do not sufficiently identify a *claim* for the School to respond.

9. Paragraph 16 refers to “billed moneys,” but does not explain what that means, and alleges it is in retaliation for filing due process. Claims for damages for retaliation are not within the jurisdiction of a due process proceeding.

10. Paragraph 17 alleges Student asked for an “extension” (presumably the extension to file an amended complaint that was granted by the hearing officer) and references a potential tort claim in Circuit Court. Tort claims are not within the jurisdiction of the due process proceeding.

11. Paragraph 18 alleges Student has been “harassed” by a teacher, but gives no details, and is alleged to be in retaliation for filing due process. Claims for damages for retaliation are not within the jurisdiction of a due process proceeding.

12. ECAB cannot tell what paragraphs 19 and 20 are intended to assert.

13. Paragraph 21 asks that [REDACTED] Schools be investigated for various reasons. Hearing officers do not conduct investigations, and due process is not the forum for requesting investigations.

14. Paragraph 22 raises an issue concerning tuition charges. Due process is not a forum that addresses such issues.

15. Paragraph 23 asks for money damages for mental anguish, discrimination, and other wrongs; a hearing officer cannot award money damages in due process proceedings.

16. Paragraph 24 asks as relief that the Student “be accommodated.” This is too vague for a hearing officer, ECAB or the School to know what relief is requested.

The complaint does not allege the School failed to identify the Student as one with a disability, failed to create an appropriate IEP, failed to implement an appropriate IEP or otherwise failed to provide FAPE. The complaint requests money damages for claims outside the jurisdiction of due process and that the Student be “accommodated.” The Student may or may not have claims under IDEA, but the complaint failed to articulate an IDEA claim or a request for relief sufficient to meet the requirements of the regulations or provide enough

NOTICE OF APPEAL RIGHTS

This decision and order is a final, appealable decision. Appeal rights of the parties under 34 CFR 300.516 state:

(a) General. Any party aggrieved by the findings and decision made under Sec. 300.507 through 300.513 or Sec. 300.530 through 300.534 who does not have the right to appeal under Sec 300.514(b), and any party aggrieved by the findings and decision under Sec. 300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under Sec. 300.507 or Sec. 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation: The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

In addition, 707 KAR 1:340, Section 8. Appeal of Decision provides the following information to aggrieved parties, in subsection (2):

A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

KRS 13B. 140, which pertains to appeals to administrative hearings in general, in Kentucky, and not to civil actions under Part B of the Act (the IDEIA), provides:

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the

final order of the agency is mailed or delivered by personal service. If venue for appeal is not in the enabling statutes, a party may appeal to Franklin Circuit Court of the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the student upon the agency and all parties of the record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Although Kentucky Administrative Regulations require the taking of an appeal from a due process decision within thirty days of the Hearing Officer's decision, the regulations are silent as to the time for taking an appeal from a state level review.

CERTIFICATE OF SERVICE

I hereby certify a copy of this Decision Affirming Hearing Officer's Order Dismissing
was served on August 17, 2020, on the following:

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