

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010061185

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 28, 2010, Parent on behalf of Student (hereafter collectively referred to as Student) filed a Due Process Hearing Request¹ (complaint) naming the Mt. Diablo Unified School District (District).

On July 12, 2010, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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 contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ 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.⁴

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

⁴ 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.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁷

DISCUSSION

Student raises four issues in his complaint. In the first issue he alleges that the District denied him a free appropriate public education (FAPE) by failing to properly provide comprehensive assessments in all areas of suspected disability from at least August 2008 to the present. The District asserts that this issue is insufficient because Student has failed to state under which eligibility category he would qualify for special education. The District also maintains that the issue fails to acknowledge that it is in the process of assessing Student or to state whether Student disagrees with the assessment process. The District further contends that the issue as stated is insufficient because Student fails to articulate why he needs independent educational evaluations rather than District provided assessments.

A review of the entire complaint, including the background facts presented, indicates that Student is basically alleging that the District failed in its statutory child find obligations as to Student during the period of time at issue. Student states that he was having academic, behavioral, and social difficulties at school and that the District should have assessed him and found him eligible for special education. The District is correct that Student does not indicate under what disability category he might be found eligible. However, under the Individuals with Disabilities Education Act (IDEA) a student’s parents do not have a duty to identify, locate, or evaluate their child’s disability. (*Hicks v. Purchase Line Sch. Dist.* (W.D. Pa. 2003) 251 F.Supp.2d 1250, 1253.) Issue one, and the facts supporting it, sufficiently puts the District on notice that Student contends that he was having difficulties in school which should have alerted the District that he might be a child with a disability as far back as August 2008, and that the District therefore should have assessed him during that time. It will be Student’s burden at hearing to prove his contentions and to show that he is, in fact, eligible for special education and services. The District’s other contentions with regard to

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

this issue amount to affirmative defenses to the allegations and are not a basis for finding a complaint insufficient.

In issue two, Student contends that the District denied him a FAPE by failing to tailor an appropriate educational program to meet his individual and unique needs. The District maintains that this issue is insufficient because it fails to state what Student's unique needs are.

Issue two flows directly from issue one in that Student basically is alleging that he should have been assessed, found eligible for special education, and then received an individualized education program to meet whatever unique needs were determined by the assessment process. The issue and the background facts supporting it are sufficient for purposes of state a case under federal and state educational law to permit the District to respond to the complaint, to participate in a resolution session and mediation, and to defend against the allegations at hearing. It will be Student's burden at hearing to prove that he has unique needs that qualify him for special education, to prove what his educational program should have contained to meet IDEA requirements, and to prove the extent of any remedy to which he believes he is entitled. Although this issue could have been alleged with more specificity, it is sufficient for pleading purposes.

Student alleges in issue three that he should have been provided with a behavioral assessment. In issue four, Student alleges that the District violated his rights and those of his parents by failing to provide a complete copy of his educational records to them. Both issues are specific and therefore sufficient to put the District on notice of the issues against which it must defend. If the District believes that OAH does not have jurisdiction to hear matters concerning an alleged failure to provide records to a student, the issue is more properly raised by way of a motion to dismiss the complaint.

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: July 16, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings