

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080044

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 2, 2010, Susan Foley, attorney for Student, filed a Due Process Hearing Request¹ (complaint) naming Palo Alto Unified School District (District). On August 10, 2010, Melissa L. Phung, attorney for District, 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 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’s complaint alleges three issues against the District involving its alleged failure to develop an IEP that offered a FAPE and their purported failure to hold annual IEP meetings.

Issue One: “The District denied [Student] a free, appropriate public education (FAPE) via the offered IEP of June 3, 2008.” Student’s complaint contains sufficient factual allegations to support his claim that the District denied a FAPE in their offer of the IEP. Student alleges that he is eligible for special education as a student with Other Health Impairments and with a Specific Learning Disability, and has deficits in academics, communication, socialization, organization, focus. He further details that he was “. . . offered 100 minutes of Resource Support per day (2 50-minute periods) and general education classes.” Student further claims that the District denied Student adequate educational placement and services because the District failed to place student in a low teacher-to-student ratio classroom and failed to place Student in a small campus. Student also claims that the District failed to prepare goals for Student’s socialization and pragmatic-language skill deficits. The complaint regarding Issue One is sufficient to put the District on notice of the issues forming the basis of this claim.

Issue Two: “The IEP-amendment offered on August 26, 2008, denied Student a FAPE.” Regarding Issue Student’s complaint contains sufficient factual allegations to support his claim that District’s amended IEP failed to offer him a FAPE by not providing services to allow him to reach the goals articulated in the IEP. Student alleges that in response to his notice of unilateral placement sent to the District on July 31, 2008, that the District added two social goals to its offer, but offered no services to allow him to make progress in the area of socialization. The complaint regarding Issue Two is sufficient to put the District on notice of the issues forming the basis of this claim.

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).

Issue Three: “Student was entitled to an annual IEP-team meeting in June 2009 and June 2010.” Student’s complaint contains sufficient factual allegations to support his claim the District failed to conduct annual IEP meetings. District has a duty to conduct annual IEP meetings for all children with disabilities within the District. A failure to conduct annual IEP meetings is closely related to numerous procedural and substantive violations of the IDEA and fundamental to the education of children with disabilities. The complaint regarding Issue Three is sufficient to put the District on notice of the issues forming the basis of this claim.

ORDER

1. Issues One, Two and Three of Student’s complaint is sufficient under section 1415(b)(7)(A)(ii).
2. All dates calendared at present in this matter shall remain on calendar.

Dated: August 13, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings