

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010110717

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 19, 2010, Parent on Behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Dry Creek Joint Elementary School District (District), Placer County Office of Education (PCOE), and Placer County Children System of Care (CSOC), as respondents.

Each respondent filed a Notice of Insufficiency (NOI) as to Student's complaint, and on December 6, 2010, the Office of Administrative Hearings (OAH) issued an Order finding Student's complaint insufficient.

On December 10, 2010, Student files his first Amended Due Process Hearing Request (amended complaint). On December 14, 2010, both the District and PCOE filed NOIs, and on December 20, 2010, CSOC filed an NOI as well.

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,

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).

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

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 Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges from March 2006 through June 2009, the respondents, participated in the seven allegations presented by Student. Student has indicated his rationale for an exception to the statute of limitations. Pages three and four of Student’s amended complaint, alleges the specific relationships between the parties and how Student believes each party is connected to the complaint. Further, on pages 12 and 13 of Student’s amended complaint, Student names the alleged party or parties allegedly responsible for each allegation. Student then provides 30 pages of alleged factual background which relates to each of the seven allegations. The purpose of an NOI is to provide the respondents with an understanding of the issues forming the basis of the complaint. It is not intended to make factual determinations as to the content of the complaint, and therefore will not address

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.

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).

issues of dismissal of parties or jurisdiction. Clearly, the complaint provides each respondent with sufficient information to prepare its case. Such information may be validly considered on collateral issues, such as statute of limitations, dismissal and jurisdiction, when presented in the proper format.

The facts alleged in Student's amended complaint are sufficient to put each of the respondents on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequately relates facts about the problem to permit each of the respondents to respond to the complaint and participate in a resolution session and mediation, or to take further action, should they individually deem it appropriate.

Therefore, Student's statement of the seven claims is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: December 20, 2010

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings