

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PALOS VERDES PENINSULA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011020128

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 3, 2011, Student filed a Due Process Hearing Request¹ (complaint) against the Palos Verdes Peninsula Unified School District (District). On February 11, 2011, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.² Student filed a response on February 16, 2011.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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.⁴ These

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 The District also filed a motion to dismiss, which will be addressed in a separate order.

³ 20 U.S.C. § 1415(b) & (c).

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

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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act and the relative informality of the due process hearings it authorizes.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge (ALJ).⁸

DISCUSSION

Student’s complaint raises three issues for determination, and the facts alleged in the complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Each issue in Student’s complaint asserts sufficient facts regarding the District’s failure to properly assess Student, failure to offer an educational program that provided Student with a FAPE and violating Student’s procedural rights. The District asserts that the complaint does not contain sufficient facts within the two-year statute of limitations that would establish any violation by the District. However, Student provides a sufficient factual basis and factual contentions from February 13, 2009, through the present regarding his suspected areas of disability, the District’s purported failure to assess and the purported deficiencies in the Districts individualized educational programs and procedural violations. Whether Student may raise at hearing evidence of Student’s needs and the District’s conduct that occurred before February 13, 2011, are a matter for the ALJ to determine at hearing. Accordingly, all issues are legally sufficient.

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

Student's complaint identifies the issues and contains adequate related facts about the problem and adequate proposed resolutions to permit the District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's complaint 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: February 22, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings