

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011030674
<hr/> PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011020890 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 24, 2011, Paso Robles Joint Unified School District (District) filed a Due Process Hearing Request¹ (District's complaint) naming Student as the respondent. On March 14, 2011, Student filed a Due Process Hearing Request (Student's complaint) naming District and San Luis Obispo County Office of Education as respondents. Student complaint was consolidated with District's complaint on Student's motion.

On March 29, 2011, 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

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).

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

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 is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem.

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).

Student's complaint alleges that Student is currently a second grader attending elementary school within District. Student's complaint recounts his educational history beginning with an assessment in 2005. It describes his initial IEP held on September 13, 2005, and states the goals stated therein. It recounts his second IEP on September 13, 2006 and recounts which goals he had and had not reached. It continues with a history of further assessments, IEPs, and goals during the years 2006 through 2010. It then recounts behavior incidents occurring through 2010. It specifically cites an IEP amendment meeting on December 8, 2009 to revise Student's behavior plan, and alleges that the behavior plan was a denial of FAPE. It then recounts subsequent revisions to the behavior plan at IEPs in 2010. It then alleges that an independent educational evaluation was requested on January 11, 2011 in the area of functional analysis assessment. The complaint states five issues: whether Student was assessed competently in all areas of suspected disability during the statutory period; whether his IEPs were reasonably calculated to render him educational benefit by including measurable baselines of ability, sufficient behavior information, as well as measureable annual goals which addressed all of his identified educational needs; whether he received meaningful educational benefit from his IEPs during the statutory period; whether respondents followed the law procedurally with regards to IEP team meetings during the statutory period, and whether respondents "denied [Student] a FAPE by shortening his school day because it failed to properly address his behavioral needs."

Student's complaint does not identify which assessment or assessments were insufficient, nor in what areas District failed to assess Student. The complaint does not identify which IEPs were not reasonably calculated to render Student educational benefit, nor does it assert sufficient facts to demonstrate which IEPs are at issue or in which respects. The complaint does not state which IEPs are at issue when it concludes that Student did not receive meaningful educational benefit from his IEPs. Finally, the complaint fails to allege any facts sufficient to support its statement that Student was denied a FAPE due to procedural violations by District.

Therefore, Student has failed to state sufficient facts supporting his claims, and the complaint is insufficient.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁸

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student's fails to file a timely amended complaint, the hearing shall proceed only on District's complaint.

5. All dates previously set in this matter are vacated.

Dated: April 1, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings