

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHULA VISTA ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2011031306

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 23, 2011 Student filed a Due Process Hearing Request¹ (complaint) naming Chula Vista Elementary School District (District).

On April 7, 2011, 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 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

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).

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

The complaint raises two problems against District. Problem one alleges that the May 18, 2010 Individualized Education Program (IEP) and the December 15, 2010 amendment IEP did not provide Student, who is deaf and hard of hearing (DHH), a free appropriate public education (FAPE) by failing to consider, develop and utilize Student’s preferred mode of communication which was oral. Student alleges that the May 18, 2010 IEP, which was Student’s initial IEP, placed her at District’s DHH program. The IEP team failed to discuss any of the factors required to be considered in the development of Student’s program. The complaint further alleges that the IEP team was not composed of all necessary members that were critical to the development of the ultimate goal to mainstream Student after the development of her oral language skills.

Problem two alleges that the IEP denied student a FAPE by failing to offer appropriate placement and services to meet Student’s unique needs. The complaint alleges that the IEP failed to consider Student’s special communication needs, which resulted in an offer of placement that did not meet those needs. As a result Student was unilaterally placed in private school.

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).

The facts alleged in problems one and two of Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. The complaint further contains a description of the nature of the problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student. The complaint also sets forth adequate facts relating to the problems; and proposed resolution of the problems to the extent known and available to Student at the time to permit District to respond to the complaint and participate in a resolution session and mediation.

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 remain on calendar as scheduled.

Dated: April 11, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings