

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2011040262

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 8, 2011, Student filed a Due Process Hearing Request¹ (complaint) against the Roseville City Elementary School District (District). On April 21, 2011, the 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 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 Individuals with Disabilities Education Act 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 contains four issues for hearing, alleging that the District failed to timely assess Student, provide agreed upon speech and language services and properly communicate with Parents. In the first issue, Student alleges that the District agreed to conduct an occupational therapy assessment in the November 10, 2010 individualized educational program, but failed to conduct the agreed-upon assessment. The complaint contains sufficient allegations that the District agreed to assess Student, but failed to do so. Therefore, Issue 1 contains sufficient factual allegations.

Student alleges in Issue 2 that the District failed to provide speech and language services pursuant to the parties’ January 9, 2009 memorandum of understanding. The complaint contains adequate allegations regarding the District’s purported failure to provide agreed-upon services. Accordingly, this issue is sufficiently pled.

In Issue 3, Student asserts that the District refused to communicate with Parents regarding the number of speech and language sessions that were conducted with another student. The complaint does not contain sufficient allegations why the District needed to communicate the requested information and how the District’s failure denied Student a FAPE. Accordingly, this issue is insufficiently pled.

Finally, in Issue 4, Student asserts that the District dealt with the Parents in bad faith. Student’s contention does not constitute a denial of a FAPE. Accordingly, this issue is insufficiently pled.

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 1 and 2 are sufficiently pled to put the District on notice as to the basis of Student's claims to permit the District to respond to the complaint and participate in a resolution session and mediation.

With regard to Issues 3 and 4, Student fails to allege sufficient facts supporting these claims to put the District on notice, and therefore these claims are insufficient.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Parents request the assistance of a mediator in identifying the issues, they should contact OAH immediately in writing.

ORDER

1. Issues 1 and 2 of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues 3 and 4 of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

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

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1 and 2 in Student's complaint.

Dated: April 21, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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